

By: Wohlgemuth, Heflin

H.B. No. 2292

Substitute the following for H.B. No. 2292:

By: Wohlgemuth

C.S.H.B. No. 2292

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the provision of health and human services in this
3 state, including the powers and duties of the Health and Human
4 Services Commission and other state agencies; providing penalties.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 ARTICLE 1. ORGANIZATION OF THE HEALTH AND HUMAN SERVICES

7 COMMISSION AND HEALTH AND HUMAN SERVICES AGENCIES

8 SECTION 1.01. (a) Section 531.001(4), Government Code, as
9 amended by Chapters 53, 957, and 1420, Acts of the 77th Legislature,
10 Regular Session, 2001, is reenacted and amended to read as follows:

11 (4) "Health and human services agencies" includes the:

12 (A) Interagency Council on Early Childhood
13 Intervention;

14 (B) Texas Department on Aging;

15 (C) Texas Commission on Alcohol and Drug Abuse;

16 (D) Texas Commission for the Blind;

17 (E) Texas Commission for the Deaf and Hard of
18 Hearing;

19 (F) Texas Department of Health;

20 (G) Texas Department of Human Services;

21 (H) Texas Department of Mental Health and Mental
22 Retardation;

23 (I) Texas Rehabilitation Commission;

24 (J) Department of Protective and Regulatory

1 Services; ~~and~~

2 (K) Texas Health Care Information Council;

3 (L) Department of Aging, Community, Disability,
4 and Long-Term Care Services; and

5 (M) Department of Health Services.

6 (b) Effective on the date the agencies listed in Section
7 1.25 of this article are abolished as provided by that section,
8 Section 531.001(4), Government Code, as amended by Chapters 53,
9 957, and 1420, Acts of the 77th Legislature, Regular Session, 2001,
10 is reenacted and amended to read as follows:

11 (4) "Health and human services agencies" includes the:

12 (A) Department of Aging, Community, Disability,
13 and Long-Term Care Services ~~[Interagency Council on Early Childhood~~
14 ~~Intervention]~~;

15 (B) Department of Health Services ~~[Texas~~
16 ~~Department on Aging]~~; and

17 ~~(C) [Texas Commission on Alcohol and Drug Abuse,~~

18 ~~[(D) Texas Commission for the Blind,~~

19 ~~[(E) Texas Commission for the Deaf and Hard of~~
20 ~~Hearing,~~

21 ~~[(F) Texas Department of Health,~~

22 ~~[(G) Texas Department of Human Services,~~

23 ~~[(H) Texas Department of Mental Health and Mental~~
24 ~~Retardation,~~

25 ~~[(I) Texas Rehabilitation Commission,~~

26 ~~[(J)] Department of Protective and Regulatory~~
27 ~~Services]~~ ~~and~~

1 [~~(K) Texas Health Care Information Council~~].

2 SECTION 1.02. Section 531.004, Government Code, is amended
3 to read as follows:

4 Sec. 531.004. SUNSET PROVISION. The Health and Human
5 Services Commission is subject to Chapter 325 (Texas Sunset Act).
6 Unless continued in existence as provided by that chapter, the
7 commission is abolished and this chapter expires September 1, 2009
8 [~~2007~~].

9 SECTION 1.03. Section 531.0055, Government Code, is amended
10 to read as follows:

11 Sec. 531.0055. COMMISSIONER: GENERAL RESPONSIBILITY FOR
12 [~~RELATING TO CERTAIN FUNCTIONS OF~~] HEALTH AND HUMAN SERVICES
13 AGENCIES. (a) In this section and in Section 531.0056, "agency
14 director" [~~+~~

15 [~~(1) "Agency director"~~] means the [~~director,~~]
16 executive director [~~, or commissioner~~] of a health and human
17 services agency.

18 [~~(2) "Policymaking body" means the board or commission~~
19 ~~with policymaking authority over a health and human services~~
20 ~~agency.~~]

21 (b) The commission shall:

22 (1) supervise the administration and operation of the
23 Medicaid program, including the administration and operation of the
24 Medicaid managed care system in accordance with Section 531.021;

25 (2) perform [~~supervise~~] information systems planning
26 and management for health and human services agencies under Section
27 531.0273, with:

1 (A) the provision of information technology
2 services at health and human services agencies considered to be a
3 centralized administrative support service either performed by
4 commission personnel or performed under a contract with the
5 commission; and

6 (B) an emphasis on research and implementation on
7 a demonstration or pilot basis of appropriate and efficient uses of
8 new and existing technology to improve the operation of health and
9 human services agencies and delivery of health and human services;

10 (3) monitor and ensure the effective use of all
11 federal funds received by a health and human services agency in
12 accordance with Section 531.028 and the General Appropriations Act;
13 and

14 (4) implement Texas Integrated Enrollment Services as
15 required by Subchapter F, except that notwithstanding Subchapter F,
16 determining eligibility for benefits under the following programs
17 is the responsibility of and must be centralized by the commission:

18 (A) the child health plan program;

19 (B) the financial assistance program under
20 Chapter 31, Human Resources Code;

21 (C) the medical assistance program under Chapter
22 32, Human Resources Code;

23 (D) the nutritional assistance programs under
24 Chapter 33, Human Resources Code;

25 (E) Supplemental Security Income (SSI) (42
26 U.S.C. Section 1381 et seq.) and its subsequent amendments, to the
27 extent permitted by federal law;

1 (F) long-term care services, as defined by
2 Section 22.0011, Human Resources Code; and

3 (G) community-based support services identified
4 or provided in accordance with Section 531.02481.

5 (c) The [~~After implementation of the commission's duties~~
6 ~~under Subsection (b), the~~] commission shall implement the powers
7 and duties given to the commission under Sections 531.0246,
8 531.0247, 2155.144, [~~as added by Chapter 1045, Acts of the 75th~~
9 ~~Legislature, Regular Session, 1997,~~] and 2167.004.

10 (d) After implementation of the commission's duties under
11 Subsections (b) and (c), the commission shall implement the powers
12 and duties given to the commission under Section 531.0248. Nothing
13 in the priorities established by this section is intended to limit
14 the authority of the commission to work simultaneously to achieve
15 the multiple tasks assigned to the commission in this section, when
16 such an approach is beneficial in the judgment of the commission.
17 The commission shall plan and implement an efficient and effective
18 centralized system of administrative support services for health
19 and human services agencies. The performance of administrative
20 support services for health and human services agencies is the
21 responsibility of the commission. The term "administrative support
22 services" includes, but is not limited to, strategic planning and
23 evaluation, audit, legal, human resources, information resources,
24 purchasing, contract management, financial management, and
25 accounting services.

26 (e) Notwithstanding any other law, the commissioner shall
27 adopt rules and policies for the operation of and provision of

1 health and human services by the health and human services
2 agencies. In addition, the commissioner, as necessary to perform
3 the functions described by Subsections (b), (c), and (d) in
4 implementation of applicable [the] policies established for an
5 agency by the commissioner [~~each agency's policymaking body~~],
6 shall:

7 (1) manage and direct the operations of each health
8 and human services agency; and

9 (2) supervise and direct the activities of each agency
10 director.

11 (f) The operational authority and responsibility of the
12 commissioner for purposes of Subsection (e) at each health and
13 human services agency includes authority over and responsibility
14 for the:

15 (1) management of the daily operations of the agency,
16 including the organization and management of the agency and agency
17 operating procedures;

18 (2) allocation of resources within the agency,
19 including use of federal funds received by the agency;

20 (3) personnel and employment policies;

21 (4) contracting, purchasing, and related policies,
22 subject to this chapter and other laws relating to contracting and
23 purchasing by a state agency;

24 (5) information resources systems used by the agency;

25 (6) location of agency facilities; and

26 (7) coordination of agency activities with activities
27 of other state agencies, including other health and human services

1 agencies.

2 (g) Notwithstanding any other law, the operational
3 authority and responsibility of the commissioner for purposes of
4 Subsection (e) at each health and human services agency includes
5 the authority and responsibility to adopt or approve, subject to
6 applicable limitations, any rate of payment or similar provision
7 required by law to be adopted or approved by the agency.

8 (h) For each health and human services agency, the
9 commissioner shall implement a program to evaluate and supervise
10 the daily operations of the agency. The program must include
11 measurable performance objectives for each agency director and
12 adequate reporting requirements to permit the commissioner to
13 perform the duties assigned to the commissioner under this section.

14 (i) To facilitate the operations of a health and human
15 services agency in accordance with this section, the commissioner
16 may delegate a specific power or duty given under Subsection (f) or
17 (g) to an agency director. The agency director acts on behalf of
18 the commissioner in performing the delegated function and reports
19 to the commissioner regarding the delegated function and any matter
20 affecting agency programs and operations.

21 (j) The commissioner shall [~~may~~] adopt rules to implement
22 the commissioner's authority under this section.

23 (k) The commissioner and each agency director shall enter
24 into a memorandum of understanding in the manner prescribed by
25 Section 531.0163 that:

26 (1) clearly defines the responsibilities of the agency
27 director and the commissioner, including:

1 (A) the responsibility of the agency director to
2 report to the governor and to report to and implement policies of
3 the commissioner; and

4 (B) the extent to which the agency director acts
5 as a liaison between the agency and the commission;

6 (2) establishes the program of evaluation and
7 supervision of daily operations required by Subsection (h); and

8 (3) describes each delegation of a power or duty made
9 under Subsection (i) or other law.

10 (1) Notwithstanding any other law, the commissioner
11 ~~[provision of this section, a policymaking body]~~ has the authority
12 ~~[provided by law]~~ to adopt policies and rules governing the
13 delivery of services to persons who are served by each health and
14 human services ~~[the]~~ agency and the rights and duties of persons who
15 are served or regulated by each ~~[the]~~ agency. ~~[The commissioner and~~
16 ~~each policymaking body shall enter into a memorandum of~~
17 ~~understanding that clearly defines:~~

18 ~~[(1) the policymaking authority of the policymaking~~
19 ~~body; and~~

20 ~~[(2) the operational authority of the commissioner.]~~

21 SECTION 1.04. Section 531.0056, Government Code, is amended
22 to read as follows:

23 Sec. 531.0056. APPOINTMENT ~~[EMPLOYMENT]~~ OF AGENCY DIRECTOR
24 BY GOVERNOR. (a) The governor shall appoint an agency director for
25 each health and human services agency. ~~[This section applies only~~
26 ~~to an agency director employed by the commissioner.]~~

27 (b) The agency director shall serve for a term of one year.

1 ~~[An agency director employed by the commissioner may be employed~~
2 ~~only with the concurrence of the agency's policymaking body and the~~
3 ~~approval of the governor.]~~

4 (c) In addition to the requirements of ~~[As established in]~~
5 Section 531.0055(k)(1), the memorandum of understanding required
6 by that section must ~~[the commissioner and agency director shall~~
7 ~~enter into a memorandum of understanding that]~~ clearly define
8 ~~[defines]~~ the responsibilities of the agency director ~~[and may~~
9 ~~establish terms and conditions of employment in the memorandum of~~
10 ~~understanding].~~

11 (d) The terms of the memorandum of understanding shall
12 outline specific performance objectives, as defined ~~[jointly]~~ by
13 the commissioner ~~[and the policymaking body]~~, to be fulfilled by
14 the agency director, including the performance objectives outlined
15 in Section 531.0055(h).

16 (e) Based upon the performance objectives outlined in the
17 memorandum of understanding, the commissioner shall perform an
18 employment evaluation of the agency director.

19 (f) The commissioner shall submit the evaluation~~[, along~~
20 ~~with any recommendation regarding the employment of the agency~~
21 ~~director,]~~ to the ~~[agency's policymaking body and the]~~ governor not
22 later than January 1 of each even-numbered year.

23 ~~[(g) The policymaking body shall consider the evaluation in~~
24 ~~a meeting of the policymaking body and take necessary action, if~~
25 ~~any, not later than 90 days after the date of the receipt of the~~
26 ~~evaluation.~~

27 ~~[(h) An agency director employed by the commissioner serves~~

1 ~~at the pleasure of the commissioner but may be discharged only with~~
2 ~~the concurrence of the agency's policymaking body.]~~

3 SECTION 1.05. Section 531.008, Government Code, is amended
4 to read as follows:

5 Sec. 531.008. DIVISIONS OF COMMISSION. (a) Subject to
6 Subsection (c), the [~~The~~] commissioner may establish divisions
7 within the commission as necessary for effective administration and
8 for the discharge of the commission's functions.

9 (b) Subject to Subsection (c), the [~~The~~] commissioner may
10 allocate and reallocate functions among the commission's
11 divisions.

12 (c) The commissioner shall establish the following
13 divisions and offices within the commission:

14 (1) the eligibility services division to make
15 eligibility determinations for services provided through the
16 commission or a health and human services agency related to:

17 (A) the child health plan program;

18 (B) the financial assistance program under
19 Chapter 31, Human Resources Code;

20 (C) the medical assistance program under Chapter
21 32, Human Resources Code;

22 (D) the nutritional assistance programs under
23 Chapter 33, Human Resources Code;

24 (E) Supplemental Security Income (SSI) (42
25 U.S.C. Section 1381 et seq.) and its subsequent amendments, to the
26 extent permitted by federal law;

27 (F) long-term care services, as defined by

1 Section 22.0011, Human Resources Code; and

2 (G) community-based support services identified
3 or provided in accordance with Section 531.02481;

4 (2) the investigations and enforcement office to
5 perform fraud investigation and enforcement functions as provided
6 by Subchapter C and other law;

7 (3) the office of the ombudsman to:

8 (A) provide dispute resolution services for the
9 commission and the health and human services agencies; and

10 (B) perform consumer protection functions
11 related to health and human services; and

12 (4) a purchasing division as provided by Section
13 531.017.

14 SECTION 1.06. Subchapter A, Chapter 531, Government Code, is
15 amended by adding Sections 531.0161, 531.0162, and 531.0163 to read
16 as follows:

17 Sec. 531.0161. NEGOTIATED RULEMAKING AND ALTERNATIVE
18 DISPUTE PROCEDURES. (a) The commission shall develop and
19 implement a policy, for the commission and each health and human
20 services agency, to encourage the use of:

21 (1) negotiated rulemaking procedures under Chapter
22 2008 for the adoption of commission rules; and

23 (2) appropriate alternative dispute resolution
24 procedures under Chapter 2009 to assist in the resolution of
25 internal and external disputes under the commission's or agency's
26 jurisdiction.

27 (b) The procedures relating to alternative dispute

1 resolution must conform, to the extent possible, to any model
2 guidelines issued by the State Office of Administrative Hearings
3 for the use of alternative dispute resolution by state agencies.

4 Sec. 531.0162. USE OF TECHNOLOGY. (a) The commission shall
5 develop and implement a policy requiring the executive director and
6 employees of each health and human services agency to research and
7 propose appropriate technological solutions to improve the
8 agency's ability to perform its functions. The technological
9 solutions must:

10 (1) ensure that the public is able to easily find
11 information about a health and human services agency on the
12 Internet;

13 (2) ensure that persons who want to use a health and
14 human services agency's services are able to:

15 (A) interact with the agency through the
16 Internet; and

17 (B) access any service that can be provided
18 effectively through the Internet; and

19 (3) be cost-effective and developed through the
20 commission's planning process.

21 (b) The commission shall develop and implement a policy
22 described by Subsection (a) in relation to the commission's
23 functions.

24 Sec. 531.0163. MEMORANDUM OF UNDERSTANDING. (a) The
25 memorandum of understanding under Section 531.0055(k) must be
26 adopted by the commissioner by rule in accordance with the
27 procedures prescribed by Subchapter B, Chapter 2001, for adopting

1 rules, except that the requirements of Section 2001.033(a)(1)(A) or
2 (C) do not apply with respect to any part of the memorandum of
3 understanding that:

4 (1) concerns only internal management or organization
5 within or among health and human services agencies and does not
6 affect private rights or procedures; or

7 (2) relates solely to the internal personnel practices
8 of health and human services agencies.

9 (b) The memorandum of understanding may be amended only by
10 following the procedures prescribed under Subsection (a).

11 SECTION 1.07. Subchapter B, Chapter 531, Government Code, is
12 amended by adding Section 531.0224 to read as follows:

13 Sec. 531.0224. PLANNING AND POLICY DIRECTION OF TEMPORARY
14 ASSISTANCE FOR NEEDY FAMILIES PROGRAM. The commission shall:

15 (1) plan and direct the financial assistance program
16 under Chapter 31, Human Resources Code, including the procurement,
17 management, and monitoring of contracts necessary to implement the
18 program;

19 (2) adopt rules and standards governing the financial
20 assistance program under Chapter 31, Human Resources Code, in
21 consultation with the policy councils of the agencies that operate
22 the program, including rules for determining eligibility for and
23 the amount and duration of an earned income disregard; and

24 (3) establish requirements for and define the scope of
25 the ongoing evaluation of the financial assistance program under
26 Chapter 31, Human Resources Code.

27 SECTION 1.08. Chapter 531, Government Code, is amended by

1 adding Subchapter K to read as follows:

2 SUBCHAPTER K. HEALTH AND HUMAN SERVICES COUNCIL

3 Sec. 531.401. DEFINITION. In this subchapter, "council"
4 means the Health and Human Services Council.

5 Sec. 531.402. HEALTH AND HUMAN SERVICES COUNCIL. (a) The
6 Health and Human Services Council is created to assist the
7 commissioner in developing rules and policies for the commission.

8 (b) The council is composed of nine members of the public
9 appointed by the governor. To be eligible for appointment to the
10 council, a person must have demonstrated an interest in and
11 knowledge of problems and available services related to the child
12 health plan program, the financial assistance program under Chapter
13 31, Human Resources Code, the medical assistance program under
14 Chapter 32, Human Resources Code, or the nutritional assistance
15 programs under Chapter 33, Human Resources Code.

16 (c) The council shall study and make recommendations to the
17 commissioner regarding the management and operation of the
18 commission, including policies and rules governing the delivery of
19 services to persons who are served by the commission and the rights
20 and duties of persons who are served or regulated by the commission.

21 (d) Chapter 551 applies to the council.

22 (e) Chapter 2110 does not apply to the council.

23 Sec. 531.403. APPOINTMENTS. (a) Appointments to the
24 council shall be made without regard to the race, color,
25 disability, sex, religion, age, or national origin of the
26 appointees.

27 (b) Appointments to the council shall be made so that each

1 geographic area of the state is represented on the council.

2 Sec. 531.404. TRAINING PROGRAM FOR COUNCIL MEMBERS. (a) A
3 person who is appointed as a member of the council may not vote,
4 deliberate, or be counted as a member in attendance at a meeting of
5 the council until the person completes a training program that
6 complies with this section.

7 (b) The training program must provide the person with
8 information regarding:

9 (1) the legislation that created the commission and
10 the council;

11 (2) the programs operated by the commission;

12 (3) the role and functions of the commission and the
13 council, including detailed information regarding the advisory
14 responsibilities of the council;

15 (4) the rules of the commissioner applicable to the
16 commission, with an emphasis on the rules that relate to
17 disciplinary and investigatory authority;

18 (5) the current budget for the commission;

19 (6) the results of the most recent formal audit of the
20 commission;

21 (7) the requirements of:

22 (A) the open meetings law, Chapter 551;

23 (B) the public information law, Chapter 552;

24 (C) the administrative procedure law, Chapter
25 2001; and

26 (D) other laws relating to public officials,
27 including conflict-of-interest laws; and

1 (8) any applicable ethics policies adopted by the
2 commissioner or the Texas Ethics Commission.

3 Sec. 531.405. TERMS. (a) Council members serve for
4 staggered six-year terms with the terms of three members expiring
5 February 1 of each odd-numbered year.

6 (b) A member of the council may not serve more than two
7 consecutive full terms as a council member.

8 Sec. 531.406. VACANCY. The governor by appointment shall
9 fill the unexpired term of a vacancy on the council.

10 Sec. 531.407. PRESIDING OFFICER; OTHER OFFICERS; MEETINGS.

11 (a) The governor shall designate a member of the council as the
12 presiding officer to serve in that capacity at the pleasure of the
13 governor.

14 (b) The members of the council shall elect any other
15 necessary officers.

16 (c) The council shall meet quarterly and at other times at
17 the call of the presiding officer. The council may hold meetings in
18 different areas of the state.

19 Sec. 531.408. REIMBURSEMENT FOR EXPENSES. A council member
20 may not receive compensation for service as a member of the council
21 but is entitled to reimbursement for travel expenses incurred by
22 the member while conducting the business of the council as provided
23 by the General Appropriations Act.

24 Sec. 531.409. PUBLIC INTEREST INFORMATION AND COMPLAINTS.

25 (a) The commissioner, with the advice of the council, shall prepare
26 information of public interest describing the functions of the
27 commission and the procedures by which complaints are filed with

1 and resolved by the commission. The commission shall make the
2 information available to the public and appropriate state
3 governmental entities.

4 (b) The commissioner by rule shall establish methods by
5 which consumers and service recipients are notified of the name,
6 mailing address, and telephone number of the commission for
7 directing complaints to the commission.

8 Sec. 531.410. PUBLIC ACCESS AND TESTIMONY. The
9 commissioner shall develop and implement policies that provide the
10 public with a reasonable opportunity to appear before the council
11 or commissioner and to speak on any issue under the jurisdiction of
12 the commission.

13 Sec. 531.411. POLICYMAKING AND MANAGEMENT
14 RESPONSIBILITIES. The commissioner, with the advice of the
15 council, shall develop and the commission shall implement policies
16 that clearly delineate the policymaking responsibilities of the
17 commissioner from the management responsibilities of the
18 commission and the staff of the commission.

19 SECTION 1.09. The Health and Safety Code is amended by
20 adding Title 12 to read as follows:

21 TITLE 12. HEALTH AND MENTAL HEALTH

22 CHAPTER 1001. DEPARTMENT OF HEALTH SERVICES

23 SUBCHAPTER A. GENERAL PROVISIONS

24 Sec. 1001.001. DEFINITIONS. In this chapter:

25 (1) "Commission" means the Health and Human Services
26 Commission.

27 (2) "Commissioner" means the commissioner of health

1 and human services.

2 (3) "Council" means the Health Services Council.

3 (4) "Department" means the Department of Health
4 Services.

5 (5) "Executive director" means the executive director
6 of the department.

7 Sec. 1001.002. AGENCY. The department is an agency of the
8 state.

9 Sec. 1001.003. SUNSET PROVISION. The department is subject
10 to Chapter 325, Government Code (Texas Sunset Act). Unless
11 continued in existence as provided by that chapter, the department
12 is abolished and this chapter expires September 1, 2009.

13 [Sections 1001.004-1001.020 reserved for expansion]

14 SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

15 Sec. 1001.021. HEALTH SERVICES COUNCIL. (a) The Health
16 Services Council is created to assist the commissioner in
17 developing rules and policies for the department.

18 (b) The council is composed of nine members of the public
19 appointed by the governor. To be eligible for appointment to the
20 council, a person must have demonstrated an interest in and
21 knowledge of problems and available services related to public
22 health, mental health, substance abuse, deafness, or hard of
23 hearing conditions.

24 (c) The council shall study and make recommendations to the
25 commissioner regarding the management and operation of the
26 department, including policies and rules governing the delivery of
27 services to persons who are served by the department and the rights

1 and duties of persons who are served or regulated by the department.

2 (d) Chapter 551, Government Code, applies to the council.

3 (e) Chapter 2110, Government Code, does not apply to the
4 council.

5 Sec. 1001.022. APPOINTMENTS. (a) Appointments to the
6 council shall be made without regard to the race, color,
7 disability, sex, religion, age, or national origin of the
8 appointees.

9 (b) Appointments to the council shall be made so that each
10 geographic area of the state is represented on the council.

11 Sec. 1001.023. TRAINING PROGRAM FOR COUNCIL MEMBERS. (a) A
12 person who is appointed as a member of the council may not vote,
13 deliberate, or be counted as a member in attendance at a meeting of
14 the council until the person completes a training program that
15 complies with this section.

16 (b) The training program must provide the person with
17 information regarding:

18 (1) the legislation that created the department and
19 the council;

20 (2) the programs operated by the department;

21 (3) the role and functions of the department and the
22 council, including detailed information regarding:

23 (A) the division of authority and of
24 responsibility between the executive director and the
25 commissioner; and

26 (B) the advisory responsibilities of the
27 council;

1 (4) the rules of the commissioner applicable to the
2 department, with an emphasis on the rules that relate to
3 disciplinary and investigatory authority;

4 (5) the current budget for the department;

5 (6) the results of the most recent formal audit of the
6 department;

7 (7) the requirements of:

8 (A) the open meetings law, Chapter 551,
9 Government Code;

10 (B) the public information law, Chapter 552,
11 Government Code;

12 (C) the administrative procedure law, Chapter
13 2001, Government Code; and

14 (D) other laws relating to public officials,
15 including conflict-of-interest laws; and

16 (8) any applicable ethics policies adopted by the
17 commissioner or the Texas Ethics Commission.

18 Sec. 1001.024. TERMS. (a) Council members serve for
19 staggered six-year terms with the terms of three members expiring
20 February 1 of each odd-numbered year.

21 (b) A member of the council may not serve more than two
22 consecutive full terms as a council member.

23 Sec. 1001.025. VACANCY. The governor by appointment shall
24 fill the unexpired term of a vacancy on the council.

25 Sec. 1001.026. PRESIDING OFFICER; OTHER OFFICERS;
26 MEETINGS. (a) The governor shall designate a member of the council
27 as the presiding officer to serve in that capacity at the pleasure

1 of the governor.

2 (b) The members of the council shall elect any other
3 necessary officers.

4 (c) The council shall meet quarterly and at other times at
5 the call of the presiding officer. The council may hold meetings in
6 different areas of the state.

7 Sec. 1001.027. REIMBURSEMENT FOR EXPENSES. A council
8 member may not receive compensation for service as a member of the
9 council but is entitled to reimbursement for travel expenses
10 incurred by the member while conducting the business of the council
11 as provided by the General Appropriations Act.

12 Sec. 1001.028. PUBLIC INTEREST INFORMATION AND COMPLAINTS.

13 (a) The commissioner, with the advice of the council, shall prepare
14 information of public interest describing the functions of the
15 department and the procedures by which complaints are filed with
16 and resolved by the department. The commission shall make the
17 information available to the public and appropriate state
18 governmental entities.

19 (b) The commissioner by rule shall establish methods by
20 which consumers and service recipients are notified of the name,
21 mailing address, and telephone number of the department for
22 directing complaints to the department.

23 Sec. 1001.029. PUBLIC ACCESS AND TESTIMONY. The
24 commissioner shall develop and implement policies that provide the
25 public with a reasonable opportunity to appear before the council
26 or commissioner and to speak on any issue under the jurisdiction of
27 the department.

1 (d) The executive director shall administer this chapter
2 under operational policies established by the commissioner and in
3 accordance with the memorandum of understanding under Section
4 531.0055(k), Government Code, between the executive director and
5 the commissioner, as adopted by rule.

6 Sec. 1001.052. PERSONNEL. (a) The department may employ,
7 compensate, and prescribe the duties of personnel necessary and
8 suitable to administer this chapter.

9 (b) The commissioner shall prepare and by rule adopt
10 personnel standards.

11 (c) A personnel position may be filled only by an individual
12 selected and appointed on a nonpartisan merit basis.

13 (d) The commissioner, with the advice of the council, shall
14 develop and the department shall implement policies that clearly
15 define the responsibilities of the staff of the department.

16 Sec. 1001.053. INFORMATION ABOUT QUALIFICATIONS AND
17 STANDARDS OF CONDUCT. The executive director or the executive
18 director's designee shall provide to department employees, as often
19 as necessary, information regarding the requirements for
20 employment under this chapter or rules adopted by the commissioner,
21 including information regarding a person's responsibilities under
22 applicable laws relating to standards of conduct for state
23 employees.

24 Sec. 1001.054. MERIT PAY. Subject to rules adopted by the
25 commissioner, the executive director or the executive director's
26 designee shall develop a system of annual performance evaluations.
27 All merit pay for department employees must be given under the

1 system established under this section or under rules adopted by the
2 commissioner.

3 Sec. 1001.055. CAREER LADDER. The executive director or
4 the executive director's designee shall develop an intra-agency
5 career ladder program. The program must require intra-agency
6 postings of all nonentry-level positions concurrently with any
7 public posting.

8 Sec. 1001.056. EQUAL EMPLOYMENT OPPORTUNITY POLICY. (a)
9 Subject to rules adopted by the commissioner, the executive
10 director or the executive director's designee shall prepare and
11 maintain a written policy statement that implements a program of
12 equal employment opportunity to ensure that all personnel decisions
13 are made without regard to race, color, disability, sex, religion,
14 age, or national origin.

15 (b) Unless the following are included in a policy statement
16 adopted by the commissioner that is applicable to the department,
17 the policy statement must include:

18 (1) personnel policies, including policies relating
19 to recruitment, evaluation, selection, training, and promotion of
20 personnel, that show the intent of the department to avoid the
21 unlawful employment practices described by Chapter 21, Labor Code;
22 and

23 (2) an analysis of the extent to which the composition
24 of the department's personnel is in accordance with state and
25 federal law and a description of reasonable methods to achieve
26 compliance with state and federal law.

27 (c) The policy statement must be:

1 (1) updated annually;

2 (2) reviewed by the state Commission on Human Rights
3 for compliance with Subsection (b)(1); and

4 (3) filed with the governor's office.

5 Sec. 1001.057. STATE EMPLOYEE INCENTIVE PROGRAM. The
6 executive director or the executive director's designee shall
7 provide to department employees information and training on the
8 benefits and methods of participation in the state employee
9 incentive program.

10 [Sections 1001.058-1001.070 reserved for expansion]

11 SUBCHAPTER D. POWERS AND DUTIES OF DEPARTMENT

12 Sec. 1001.071. GENERAL POWERS AND DUTIES OF DEPARTMENT
13 RELATED TO HEALTH CARE. The department is responsible for
14 administering human services programs regarding the public health,
15 including:

16 (1) implementing the state's health care delivery
17 programs;

18 (2) administering state health facilities, hospitals,
19 and health care systems;

20 (3) developing and providing health care services, as
21 directed by law;

22 (4) providing for the prevention and control of
23 communicable diseases;

24 (5) providing public education on health-related
25 matters, as directed by law;

26 (6) compiling and reporting health-related
27 information, as directed by law;

1 (7) acting as the lead agency for implementation of
2 state policies regarding the human immunodeficiency virus and
3 acquired immunodeficiency syndrome and administering programs
4 related to the human immunodeficiency virus and acquired
5 immunodeficiency syndrome;

6 (8) administering state programs related to cancer,
7 including the Texas Cancer Plan;

8 (9) investigating the causes of injuries and methods
9 of prevention;

10 (10) administering a grant program to provide
11 appropriated money to counties, municipalities, public health
12 districts, and other political subdivisions for their use to
13 provide or pay for essential public health services;

14 (11) administering the registration of vital
15 statistics;

16 (12) licensing, inspecting, and enforcing regulations
17 regarding health facilities, other than long-term care facilities
18 regulated by the Department of Protective and Regulatory Services;

19 (13) implementing established standards and
20 procedures for the management and control of sanitation and for
21 health protection measures;

22 (14) enforcing regulations regarding radioactive
23 materials;

24 (15) enforcing regulations regarding food, bottled
25 and vended drinking water, drugs, cosmetics, and health devices;

26 (16) enforcing regulations regarding food service
27 establishments, retail food stores, mobile food units, and roadside

1 food vendors;

2 (17) enforcing regulations controlling hazardous
3 substances in households and workplaces; and

4 (18) administering services focused on individuals
5 who are deaf or hard of hearing.

6 Sec. 1001.072. GENERAL POWERS AND DUTIES OF DEPARTMENT
7 RELATED TO MENTAL HEALTH. The department is responsible for
8 administering human services programs regarding mental health,
9 including:

10 (1) administering and coordinating mental health
11 services at the local and state level;

12 (2) operating the state's mental health facilities;
13 and

14 (3) inspecting, licensing, and enforcing regulations
15 regarding mental health facilities, other than long-term care
16 facilities regulated by the Department of Protective and Regulatory
17 Services.

18 Sec. 1001.073. GENERAL POWERS AND DUTIES OF DEPARTMENT
19 RELATED TO SUBSTANCE ABUSE. The department is responsible for
20 administering human services programs regarding substance abuse,
21 including:

22 (1) administering and coordinating substance abuse
23 prevention and treatment programs at the state and local level;

24 (2) inspecting, licensing, and enforcing regulations
25 regarding substance abuse treatment facilities; and

26 (3) providing public education on substance abuse
27 issues, as directed by law.

1 Sec. 1001.074. INFORMATION REGARDING COMPLAINTS. (a) The
2 department shall maintain a file on each written complaint filed
3 with the department. The file must include:

4 (1) the name of the person who filed the complaint;

5 (2) the date the complaint is received by the
6 department;

7 (3) the subject matter of the complaint;

8 (4) the name of each person contacted in relation to
9 the complaint;

10 (5) a summary of the results of the review or
11 investigation of the complaint; and

12 (6) an explanation of the reason the file was closed,
13 if the department closed the file without taking action other than
14 to investigate the complaint.

15 (b) The department shall provide to the person filing the
16 complaint and to each person who is a subject of the complaint a
17 copy of the commissioner's and the department's policies and
18 procedures relating to complaint investigation and resolution.

19 (c) The department, at least quarterly until final
20 disposition of the complaint, shall notify the person filing the
21 complaint and each person who is a subject of the complaint of the
22 status of the investigation unless the notice would jeopardize an
23 undercover investigation.

24 Sec. 1001.075. RULES. The commissioner may adopt rules
25 reasonably necessary for the department to administer this chapter,
26 consistent with the memorandum of understanding under Section
27 531.0055(k), Government Code, between the executive director and

1 the commissioner, as adopted by rule.

2 SECTION 1.10. Section 40.001, Human Resources Code, is
3 amended by adding Subdivisions (2-a) and (2-b) to read as follows:

4 (2-a) "Commissioner" means the commissioner of health
5 and human services.

6 (2-b) "Council" means the Protective and Regulatory
7 Council.

8 SECTION 1.11. Section 40.002, Human Resources Code, is
9 amended to read as follows:

10 Sec. 40.002. DEPARTMENT OF PROTECTIVE AND REGULATORY
11 SERVICES; GENERAL DUTIES OF DEPARTMENT [~~RESPONSIBILITY~~]. (a) The
12 Department of Protective and Regulatory Services is composed of the
13 council [~~board~~], the executive director, an administrative staff,
14 and other officers and employees necessary to efficiently carry out
15 the purposes of this chapter.

16 (b) Notwithstanding any other law, the [~~The~~] department
17 shall [~~is the state agency with primary responsibility for~~]:

18 (1) provide [~~providing~~] protective services for
19 children and elderly and disabled persons, including
20 investigations of alleged abuse, neglect, or exploitation in
21 facilities of the Texas Department of Mental Health and Mental
22 Retardation or its successor agency;

23 (2) provide [~~providing~~] family support and family
24 preservation services that [~~which~~] respect the fundamental right of
25 parents to control the education and upbringing of their children;

26 (3) license, register, and enforce regulations
27 applicable to [~~regulating~~] child-care facilities and child-care

1 administrators; ~~and~~

2 (4) implement ~~[implementing]~~ and manage ~~[managing]~~
3 programs intended to provide early intervention or prevent at-risk
4 behaviors that lead to child abuse, delinquency, running away,
5 truancy, and dropping out of school;

6 (5) implement programs intended to prevent family
7 violence and provide services to victims of family violence; and

8 (6) perform all licensing and enforcement activities
9 and functions related to long-term care facilities, including
10 licensing and enforcement activities related to convalescent and
11 nursing homes and related institutions under Chapter 242, Health
12 and Safety Code.

13 (c) The department is the state agency designated to
14 cooperate with the federal government in the administration of
15 programs under:

16 (1) Parts B and E, Title IV, federal Social Security
17 Act (42 U.S.C. Sections 620 et seq. and 670 et seq.); and

18 (2) other federal law for which the department has
19 administrative responsibility.

20 (d) The department shall cooperate with the United States
21 Department of Health and Human Services and other federal and state
22 agencies in a reasonable manner and in conformity with the
23 provisions of federal law and this subtitle to the extent necessary
24 to qualify for federal assistance in the delivery of services.

25 (e) If the department determines that a provision of state
26 law governing the department conflicts with a provision of federal
27 law, the commissioner ~~[department]~~ may adopt policies and rules

1 necessary to allow the state to receive and spend federal matching
2 funds to the fullest extent possible in accordance with the federal
3 statutes, this subtitle, and the state constitution and within the
4 limits of appropriated funds.

5 SECTION 1.12. Sections 40.021, 40.022, 40.0226, 40.024,
6 40.025, 40.026, and 40.027, Human Resources Code, are amended to
7 read as follows:

8 Sec. 40.021. [~~BOARD OF~~] PROTECTIVE AND REGULATORY COUNCIL
9 [~~SERVICES~~]. (a) The Protective and Regulatory Council is created
10 to assist the commissioner in developing rules and policies for the
11 department [~~board is composed of six members appointed by the~~
12 ~~governor with the advice and consent of the senate. The governor~~
13 ~~shall designate one member to be the presiding officer of the board~~
14 ~~to serve in that capacity at the pleasure of the governor].~~

15 (b) The council is composed of nine members of the public
16 appointed by the governor. To be eligible for appointment to the
17 council, a person must have demonstrated an interest in and
18 knowledge of problems and available services related to the
19 functions of the department. [~~Four members of the board must have a~~
20 ~~demonstrated interest in the services provided by the department,~~
21 ~~and two members must represent the public.]~~

22 (c) The council shall study and make recommendations to the
23 commissioner regarding the management and operation of the
24 department, including policies and rules governing the delivery of
25 services to persons who are served by the department and the rights
26 and duties of persons who are served or regulated by the department.

27 (d) Chapter 551, Government Code, applies to the council.

1 (e) Chapter 2110, Government Code, does not apply to the
2 council [~~board shall be appointed without regard to race, color,~~
3 ~~disability, sex, religion, age, or national origin~~].

4 Sec. 40.022. APPOINTMENTS [~~RESTRICTIONS ON BOARD~~
5 ~~APPOINTMENT OR MEMBERSHIP~~]. (a) Appointments to the council shall
6 be made without regard to the race, color, disability, sex,
7 religion, age, or national origin of the appointees. [~~A person is~~
8 ~~not eligible for appointment as a member of the board if the person~~
9 ~~or the person's spouse:~~

10 [~~(1) is a person who is employed by or participates in~~
11 ~~the management of a business entity or other organization regulated~~
12 ~~by the department or receiving funds from the department,~~

13 [~~(2) owns or controls, directly or indirectly, more~~
14 ~~than a 10 percent interest in a business entity or other~~
15 ~~organization that is regulated by the department or that receives~~
16 ~~funds from the department,~~

17 [~~(3) uses or receives a substantial amount of tangible~~
18 ~~goods, services, or money from the department, other than~~
19 ~~compensation or reimbursement authorized by law for board~~
20 ~~membership, attendance, or expenses, or as a client or a parent or~~
21 ~~guardian of a client receiving services from the department, or~~

22 [~~(4) is an employee, officer, or paid consultant of a~~
23 ~~trade association in a field under the jurisdiction of the~~
24 ~~department.]~~

25 (b) Appointments to the council shall be made so that each
26 geographic area of the state is represented on the council. [~~In~~
27 ~~addition to the requirements of Subsection (a), a person is not~~

1 ~~eligible for appointment as a public member of the board if the~~
2 ~~person or the person's spouse is registered, certified, or licensed~~
3 ~~by an occupational regulatory agency in a field under the~~
4 ~~jurisdiction of the department.]~~

5 Sec. 40.0226. [~~BOARD MEMBER~~] TRAINING PROGRAM FOR COUNCIL
6 MEMBERS. (a) A person who is appointed as a member of the council
7 may not vote, deliberate, or be counted as a member in attendance at
8 a meeting of the council until the person completes a training
9 program that complies with [~~Before a member of the board may assume~~
10 ~~the member's duties and before the member may be confirmed by the~~
11 ~~senate, the member must complete at least one course of the training~~
12 ~~program established under~~] this section.

13 (b) The [A] training program must [~~established under this~~
14 ~~section shall~~] provide information to the member regarding:

15 (1) the [~~enabling~~] legislation that created the
16 department and the council [~~board~~];

17 (2) the programs operated by the department;

18 (3) the role and functions of the department and the
19 council, including detailed information regarding:

20 (A) the division of authority and of
21 responsibility between the executive director and the
22 commissioner; and

23 (B) the advisory responsibilities of the
24 council;

25 (4) the rules of the commissioner applicable to the
26 department, with an emphasis on the rules that relate to
27 disciplinary and investigatory authority;

- 1 (5) the current budget for the department;
- 2 (6) the results of the most recent formal audit of the
3 department;
- 4 (7) the requirements of the:
- 5 (A) open meetings law, Chapter 551, Government
6 Code;
- 7 (B) public information [~~open records~~] law,
8 Chapter 552, Government Code; and
- 9 (C) administrative procedure law, Chapter 2001,
10 Government Code;
- 11 (8) the requirements of the conflict-of-interest laws
12 and other laws relating to public officials; and
- 13 (9) any applicable ethics policies adopted by the
14 commissioner [~~board~~] or the Texas Ethics Commission.

15 Sec. 40.024. [~~BOARD~~] TERMS; VACANCY. (a) Members of the
16 council [~~board~~] serve for staggered six-year terms, with the terms
17 of three [~~two~~] members expiring February 1 of each odd-numbered
18 year.

19 (b) A member of the council may not serve more than two
20 consecutive full terms as a council member.

21 (c) The governor by appointment shall fill the unexpired
22 term of a vacancy on the council.

23 Sec. 40.025. REIMBURSEMENT FOR EXPENSES [~~BOARD PER DIEM~~].
24 A council member may not receive compensation for service as a
25 member of the council but is entitled to reimbursement for travel
26 expenses incurred by the member while conducting the business of
27 the council as provided [~~While performing their duties, board~~]

1 ~~members are entitled to a per diem as prescribed]~~ by the General
2 Appropriations Act.

3 Sec. 40.026. PRESIDING OFFICER; OTHER OFFICERS; [BOARD]
4 MEETINGS[~~, QUORUM~~]. (a) The governor shall designate a member of
5 the council as the presiding officer to serve in that capacity at
6 the pleasure of the governor [~~board shall meet at least quarterly~~
7 ~~and at the call of the presiding officer]~~.

8 (b) The members of the council shall elect any other
9 necessary officers [~~Four members of the board constitute a quorum~~].

10 (c) The council shall meet quarterly and at other times at
11 the call of the presiding officer. The council may hold meetings in
12 different areas of the state.

13 Sec. 40.027. EXECUTIVE DIRECTOR. (a) The governor
14 [~~commissioner of health and human services~~] shall appoint an
15 [~~employ the~~] executive director, who is to be selected according to
16 education, training, experience, and demonstrated ability [~~in~~
17 ~~accordance with Section 531.0056, Government Code]~~.

18 (b) The executive director serves for a term of one year.

19 (c) Subject to the commissioner's control, the executive
20 director shall act as the department's chief administrative officer
21 and as a liaison between the department and commission.

22 (d) The executive director shall administer this chapter
23 and other laws relating to the department under operational
24 policies established [~~is the executive head of the department. The~~
25 ~~executive director shall perform the duties assigned]~~ by the
26 commissioner and in accordance with the memorandum of understanding
27 under Section 531.0055(k), Government Code, between the executive

1 director and the commissioner, as adopted by rule [~~of health and~~
2 ~~human services and state law~~].

3 SECTION 1.13. The Human Resources Code is amended by adding
4 Title 11 to read as follows:

5 TITLE 11. COMMUNITY-BASED AND LONG-TERM CARE SERVICES

6 CHAPTER 161. DEPARTMENT OF AGING, COMMUNITY, DISABILITY, AND

7 LONG-TERM CARE SERVICES

8 SUBCHAPTER A. GENERAL PROVISIONS

9 Sec. 161.001. DEFINITIONS. In this chapter:

10 (1) "Commission" means the Health and Human Services
11 Commission.

12 (2) "Commissioner" means the commissioner of health
13 and human services.

14 (3) "Council" means the Aging, Community, Disability,
15 and Long-Term Care Council.

16 (4) "Department" means the Department of Aging,
17 Community, Disability, and Long-Term Care Services.

18 (5) "Executive director" means the executive director
19 of the department.

20 Sec. 161.002. AGENCY. The department is an agency of the
21 state.

22 Sec. 161.003. SUNSET PROVISION. The department is subject
23 to Chapter 325, Government Code (Texas Sunset Act). Unless
24 continued in existence as provided by that chapter, the department
25 is abolished and this chapter expires September 1, 2009.

26 [Sections 161.004-161.020 reserved for expansion]

27 SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

1 Sec. 161.021. AGING, COMMUNITY, DISABILITY, AND LONG-TERM
2 CARE COUNCIL. (a) The Aging, Community, Disability, and Long-Term
3 Care Council is created to assist the commissioner in developing
4 rules and policies for the department.

5 (b) The council is composed of nine members of the public
6 appointed by the governor. To be eligible for appointment to the
7 council, a person must have demonstrated an interest in and
8 knowledge of problems and available services related to the aging
9 and persons with disabilities, including persons who are blind or
10 visually impaired.

11 (c) The council shall study and make recommendations to the
12 commissioner regarding the management and operation of the
13 department, including policies and rules governing the delivery of
14 services to persons who are served by the department and the rights
15 and duties of persons who are served or regulated by the department.

16 (d) Chapter 551, Government Code, applies to the council.

17 (e) Chapter 2110, Government Code, does not apply to the
18 council.

19 Sec. 161.022. APPOINTMENTS. (a) Appointments to the
20 council shall be made without regard to the race, color,
21 disability, sex, religion, age, or national origin of the
22 appointees.

23 (b) Appointments to the council shall be made so that each
24 geographic area of the state is represented on the council.

25 Sec. 161.023. TRAINING PROGRAM FOR COUNCIL MEMBERS. (a) A
26 person who is appointed as a member of the council may not vote,
27 deliberate, or be counted as a member in attendance at a meeting of

1 the council until the person completes a training program that
2 complies with this section.

3 (b) The training program must provide the person with
4 information regarding:

5 (1) the legislation that created the department and
6 the council;

7 (2) the programs operated by the department;

8 (3) the role and functions of the department and the
9 council, including detailed information regarding:

10 (A) the division of authority and of
11 responsibility between the executive director and the
12 commissioner; and

13 (B) the advisory responsibilities of the
14 council;

15 (4) the rules of the commissioner applicable to the
16 department, with an emphasis on the rules that relate to
17 disciplinary and investigatory authority;

18 (5) the current budget for the department;

19 (6) the results of the most recent formal audit of the
20 department;

21 (7) the requirements of:

22 (A) the open meetings law, Chapter 551,
23 Government Code;

24 (B) the public information law, Chapter 552,
25 Government Code;

26 (C) the administrative procedure law, Chapter
27 2001, Government Code; and

1 (D) other laws relating to public officials,
2 including conflict-of-interest laws; and

3 (8) any applicable ethics policies adopted by the
4 commissioner or the Texas Ethics Commission.

5 Sec. 161.024. TERMS. (a) Council members serve for
6 staggered six-year terms with the terms of three members expiring
7 February 1 of each odd-numbered year.

8 (b) A member of the council may not serve more than two
9 consecutive full terms as a council member.

10 Sec. 161.025. VACANCY. The governor by appointment shall
11 fill the unexpired term of a vacancy on the council.

12 Sec. 161.026. PRESIDING OFFICER; OTHER OFFICERS; MEETINGS.

13 (a) The governor shall designate a member of the council as the
14 presiding officer to serve in that capacity at the pleasure of the
15 governor.

16 (b) The members of the council shall elect any other
17 necessary officers.

18 (c) The council shall meet quarterly and at other times at
19 the call of the presiding officer. The council may hold meetings in
20 different areas of the state.

21 Sec. 161.027. REIMBURSEMENT FOR EXPENSES. A council member
22 may not receive compensation for service as a member of the council
23 but is entitled to reimbursement for travel expenses incurred by
24 the member while conducting the business of the council as provided
25 by the General Appropriations Act.

26 Sec. 161.028. PUBLIC INTEREST INFORMATION AND COMPLAINTS.

27 (a) The commissioner, with the advice of the council, shall prepare

1 information of public interest describing the functions of the
2 department and the procedures by which complaints are filed with
3 and resolved by the department. The commission shall make the
4 information available to the public and appropriate state
5 governmental entities.

6 (b) The commissioner by rule shall establish methods by
7 which consumers and service recipients are notified of the name,
8 mailing address, and telephone number of the department for
9 directing complaints to the department.

10 Sec. 161.029. PUBLIC ACCESS AND TESTIMONY. The
11 commissioner shall develop and implement policies that provide the
12 public with a reasonable opportunity to appear before the council
13 or commissioner and to speak on any issue under the jurisdiction of
14 the department.

15 Sec. 161.030. POLICYMAKING AND MANAGEMENT
16 RESPONSIBILITIES. The commissioner, with the advice of the
17 council, shall develop and the department shall implement policies
18 that clearly delineate the policymaking responsibilities of the
19 commissioner from the management responsibilities of the
20 commission, the executive director, and the staff of the
21 department.

22 Sec. 161.031. ANNUAL REPORT. (a) The executive director
23 shall file annually with the governor, the presiding officer of
24 each house of the legislature, and the commissioner a complete and
25 detailed written report accounting for all funds received and
26 disbursed by the department during the preceding fiscal year.

27 (b) The annual report must be in the form and be reported in

1 the time provided by the General Appropriations Act.

2 Sec. 161.032. OFFICES. The department shall maintain its
3 central office in Austin. The department may maintain offices in
4 other areas of the state as necessary.

5 [Sections 161.033-161.050 reserved for expansion]

6 SUBCHAPTER C. PERSONNEL

7 Sec. 161.051. EXECUTIVE DIRECTOR. (a) The governor shall
8 appoint an executive director of the department. The executive
9 director is to be selected according to education, training,
10 experience, and demonstrated ability.

11 (b) The executive director serves for a term of one year.

12 (c) Subject to the commissioner's control, the executive
13 director shall act as the department's chief administrative officer
14 and as a liaison between the department and commission.

15 (d) The executive director shall administer this chapter
16 under operational policies established by the commissioner and in
17 accordance with the memorandum of understanding under Section
18 531.0055(k), Government Code, between the executive director and
19 the commissioner, as adopted by rule.

20 Sec. 161.052. PERSONNEL. (a) The department may employ,
21 compensate, and prescribe the duties of personnel necessary and
22 suitable to administer this chapter.

23 (b) The commissioner shall prepare and by rule adopt
24 personnel standards.

25 (c) A personnel position may be filled only by an individual
26 selected and appointed on a nonpartisan merit basis.

27 (d) The commissioner, with the advice of the council, shall

1 develop and the department shall implement policies that clearly
2 define the responsibilities of the staff of the department.

3 Sec. 161.053. INFORMATION ABOUT QUALIFICATIONS AND
4 STANDARDS OF CONDUCT. The executive director or the executive
5 director's designee shall provide to department employees, as often
6 as necessary, information regarding the requirements for
7 employment under this chapter or rules adopted by the commissioner,
8 including information regarding a person's responsibilities under
9 applicable laws relating to standards of conduct for state
10 employees.

11 Sec. 161.054. MERIT PAY. Subject to rules adopted by the
12 commissioner, the executive director or the executive director's
13 designee shall develop a system of annual performance evaluations.
14 All merit pay for department employees must be given under the
15 system established under this section or under rules adopted by the
16 commissioner.

17 Sec. 161.055. CAREER LADDER. The executive director or the
18 executive director's designee shall develop an intra-agency career
19 ladder program. The program must require intra-agency postings of
20 all nonentry-level positions concurrently with any public posting.

21 Sec. 161.056. EQUAL EMPLOYMENT OPPORTUNITY POLICY. (a)
22 Subject to rules adopted by the commissioner, the executive
23 director or the executive director's designee shall prepare and
24 maintain a written policy statement that implements a program of
25 equal employment opportunity to ensure that all personnel decisions
26 are made without regard to race, color, disability, sex, religion,
27 age, or national origin.

1 (b) Unless the following are included in a policy statement
2 adopted by the commissioner that is applicable to the department,
3 the policy statement must include:

4 (1) personnel policies, including policies relating
5 to recruitment, evaluation, selection, training, and promotion of
6 personnel, that show the intent of the department to avoid the
7 unlawful employment practices described by Chapter 21, Labor Code;
8 and

9 (2) an analysis of the extent to which the composition
10 of the department's personnel is in accordance with state and
11 federal law and a description of reasonable methods to achieve
12 compliance with state and federal law.

13 (c) The policy statement must be:

14 (1) updated annually;

15 (2) reviewed by the state Commission on Human Rights
16 for compliance with Subsection (b)(1); and

17 (3) filed with the governor's office.

18 Sec. 161.057. STATE EMPLOYEE INCENTIVE PROGRAM. The
19 executive director or the executive director's designee shall
20 provide to department employees information and training on the
21 benefits and methods of participation in the state employee
22 incentive program.

23 [Sections 161.058-161.070 reserved for expansion]

24 SUBCHAPTER D. POWERS AND DUTIES OF DEPARTMENT

25 Sec. 161.071. GENERAL POWERS AND DUTIES OF DEPARTMENT. The
26 department is responsible for administering human services
27 programs for the aging and disabled, including:

1 (1) administering and coordinating programs to
2 provide community-based care and support services to promote
3 independent living for populations that would otherwise be
4 institutionalized;

5 (2) providing institutional care services, including
6 services through convalescent and nursing homes and related
7 institutions under Chapter 242, Health and Safety Code;

8 (3) providing and coordinating programs and services
9 for persons with disabilities, including programs for the
10 treatment, rehabilitation, or benefit of:

11 (A) persons with developmental disabilities or
12 mental retardation;

13 (B) persons who are blind or visually impaired;
14 and

15 (C) persons with other disabilities;

16 (4) operating state facilities for the housing,
17 treatment, rehabilitation, or benefit of persons with
18 disabilities, including state schools for persons with mental
19 retardation; and

20 (5) serving as the state unit on aging required by the
21 federal Older Americans Act of 1965 (42 U.S.C. Section 3001 et seq.)
22 and its subsequent amendments, including performing the general
23 functions under Section 101.022 to ensure:

24 (A) implementation of the federal Older
25 Americans Act of 1965 (42 U.S.C. Section 3001 et seq.) and its
26 subsequent amendments, including implementation of services and
27 volunteer opportunities under that Act for older residents of this

1 state through area agencies on aging;

2 (B) advocacy for residents of nursing facilities
3 through the office of the state long-term care ombudsman;

4 (C) fostering of the state and community
5 infrastructure and capacity to serve older residents of this state;
6 and

7 (D) availability of a comprehensive resource for
8 state government and the public on trends related to and services
9 and programs for an aging population.

10 Sec. 161.072. INFORMATION REGARDING COMPLAINTS. (a) The
11 department shall maintain a file on each written complaint filed
12 with the department. The file must include:

13 (1) the name of the person who filed the complaint;

14 (2) the date the complaint is received by the
15 department;

16 (3) the subject matter of the complaint;

17 (4) the name of each person contacted in relation to
18 the complaint;

19 (5) a summary of the results of the review or
20 investigation of the complaint; and

21 (6) an explanation of the reason the file was closed,
22 if the department closed the file without taking action other than
23 to investigate the complaint.

24 (b) The department shall provide to the person filing the
25 complaint and to each person who is a subject of the complaint a
26 copy of the commissioner's and the department's policies and
27 procedures relating to complaint investigation and resolution.

1 (c) The department, at least quarterly until final
2 disposition of the complaint, shall notify the person filing the
3 complaint and each person who is a subject of the complaint of the
4 status of the investigation unless the notice would jeopardize an
5 undercover investigation.

6 Sec. 161.073. RULES. The commissioner may adopt rules
7 reasonably necessary for the department to administer this chapter,
8 consistent with the memorandum of understanding under Section
9 531.0055(k), Government Code, between the executive director and
10 the commissioner, as adopted by rule.

11 SECTION 1.14. APPOINTMENT OF EXECUTIVE DIRECTORS. As soon
12 as possible, the governor shall appoint the executive directors of:

13 (1) the Department of Health Services in accordance
14 with Chapter 1001, Health and Safety Code, as added by this article;

15 (2) the Department of Protective and Regulatory
16 Services in accordance with Chapter 40, Human Resources Code, as
17 amended by this article; and

18 (3) the Department of Aging, Community, Disability,
19 and Long-Term Care Services in accordance with Chapter 161, Human
20 Resources Code, as added by this article.

21 SECTION 1.15. APPOINTMENTS OF COUNCIL MEMBERS. (a) As soon
22 as possible, the governor shall appoint the members of the Health
23 Services Council in accordance with Chapter 1001, Health and Safety
24 Code, as added by this article. In making the initial appointments,
25 the governor shall designate three members for terms expiring
26 February 1, 2005, three members for terms expiring February 1,
27 2007, and three members for terms expiring February 1, 2009.

1 (b) As soon as possible, the governor shall appoint the
2 members of the Protective and Regulatory Council in accordance with
3 Chapter 40, Human Resources Code, as amended by this article. In
4 making the initial appointments, the governor shall designate three
5 members for terms expiring February 1, 2005, three members for
6 terms expiring February 1, 2007, and three members for terms
7 expiring February 1, 2009.

8 (c) As soon as possible, the governor shall appoint the
9 members of the Aging, Community, Disability, and Long-Term Care
10 Council in accordance with Chapter 161, Human Resources Code, as
11 added by this article. In making the initial appointments, the
12 governor shall designate three members for terms expiring February
13 1, 2005, three members for terms expiring February 1, 2007, and
14 three members for terms expiring February 1, 2009.

15 SECTION 1.16. LIMITATION ON ACTIVITIES. A state agency
16 created under this article may, before the date specified in the
17 transition plan required under Section 1.23 of this article,
18 perform only those powers, duties, functions, programs, and
19 activities that relate to preparing for the transfer of powers,
20 duties, functions, programs, and activities to that agency in
21 accordance with this article. A state agency created under this
22 article may not operate all or any part of a health and human
23 services program before the date specified in the transition plan
24 required under Section 1.23 of this article.

25 SECTION 1.17. INITIAL COUNCIL MEETINGS. The presiding
26 officer of the council for each state agency created under this
27 article and the presiding officer of the Protective and Regulatory

1 Council shall call the initial meeting of the council as soon as
2 possible after the council members are appointed.

3 SECTION 1.18. TRANSFERS TO THE HEALTH AND HUMAN SERVICES
4 COMMISSION. (a) On the date specified in the transition plan
5 required under Section 1.23 of this article, the following powers,
6 duties, functions, programs, and activities, other than those
7 related to licensing and enforcement of regulations regarding
8 long-term care facilities, are transferred to the Health and Human
9 Services Commission:

10 (1) all powers, duties, functions, programs, and
11 activities related to administrative support services, such as
12 strategic planning and evaluation, audit, legal, human resources,
13 information resources, accounting, purchasing, financial
14 management, and contract management services, of a state agency or
15 entity abolished by Section 1.25 of this article;

16 (2) all powers, duties, functions, programs, and
17 activities of the Texas Department of Human Services related to:

18 (A) determining eligibility for long-term care
19 services and community-based support services;

20 (B) the financial assistance program under
21 Chapter 31, Human Resources Code; and

22 (C) the nutritional assistance programs under
23 Chapter 33, Human Resources Code;

24 (3) all powers, duties, functions, programs, and
25 activities related to the following programs administered by a
26 state agency or entity abolished by Section 1.25 of this article:

27 (A) the state child health plan program under

1 Chapters 62 and 63, Health and Safety Code; and

2 (B) the medical assistance program under Chapter
3 32, Human Resources Code;

4 (4) all powers, duties, functions, programs, and
5 activities of the Texas Rehabilitation Commission relating to
6 determining eligibility for Supplemental Security Income (SSI) (42
7 U.S.C. Section 1381 et seq.) and its subsequent amendments; and

8 (5) all rulemaking and policymaking authority for the
9 provision of health and human services in this state.

10 (b) On the date specified by Subsection (a) of this section:

11 (1) all obligations and contracts of a state agency or
12 entity abolished by Section 1.25 of this article that are related to
13 a power, duty, function, program, or activity transferred under
14 Subsection (a) of this section are transferred to the Health and
15 Human Services Commission;

16 (2) all property and records in the custody of a state
17 agency or entity abolished by Section 1.25 of this article that are
18 related to a power, duty, function, program, or activity
19 transferred under Subsection (a) of this section and all funds
20 appropriated by the legislature for the power, duty, function,
21 program, or activity shall be transferred to the Health and Human
22 Services Commission; and

23 (3) all complaints, investigations, or contested
24 cases that are pending before a state agency or entity abolished by
25 Section 1.25 of this article or the governing body of the agency or
26 entity and that are related to a power, duty, function, program, or
27 activity transferred under Subsection (a) of this section are

1 transferred without change in status to the Health and Human
2 Services Commission.

3 (c) A rule or form adopted by a state agency or entity
4 abolished by Section 1.25 of this article that relates to a power,
5 duty, function, program, or activity transferred under Subsection
6 (a) of this section is a rule or form of the Health and Human
7 Services Commission and remains in effect until altered by the
8 commission.

9 (d) A reference in law to a state agency or entity abolished
10 by Section 1.25 of this article, or to the governing body of the
11 agency or entity, that relates to a power, duty, function, program,
12 or activity transferred under Subsection (a) of this section means
13 the Health and Human Services Commission.

14 (e) A license, permit, or certification in effect that was
15 issued by a state agency or entity abolished by Section 1.25 of this
16 article and that relates to a power, duty, function, program, or
17 activity transferred under Subsection (a) of this section is
18 continued in effect as a license, permit, or certification of the
19 Health and Human Services Commission.

20 SECTION 1.19. TRANSFERS TO THE DEPARTMENT OF HEALTH
21 SERVICES. (a) On the date specified in the transition plan
22 required under Section 1.23 of this article, the following powers,
23 duties, functions, programs, and activities, other than those
24 related to rulemaking or policymaking, licensing and enforcement of
25 regulations regarding long-term care facilities, or administrative
26 support services such as strategic planning and evaluation, audit,
27 legal, human resources, information resources, accounting,

1 purchasing, financial management, and contract management
2 services, are transferred to the Department of Health Services:

3 (1) except as provided by Section 1.18 of this
4 article, all powers, duties, functions, programs, and activities of
5 the Texas Department of Health;

6 (2) all powers, duties, functions, programs, and
7 activities of the Texas Department of Mental Health and Mental
8 Retardation relating to providing mental health services;

9 (3) all powers, duties, functions, programs, and
10 activities of the Texas Commission on Alcohol and Drug Abuse;

11 (4) all powers, duties, functions, programs, and
12 activities of the Texas Cancer Council;

13 (5) all powers, duties, functions, programs, and
14 activities of the Texas Commission for the Deaf and Hard of Hearing;

15 (6) all powers, duties, functions, programs, and
16 activities of the Interagency Council on Early Childhood
17 Intervention; and

18 (7) all powers, duties, functions, programs, and
19 activities of the Texas Health Care Information Council.

20 (b) On the date specified by Subsection (a) of this section:

21 (1) all obligations and contracts of an entity listed
22 in Subsection (a) of this section that are related to a power, duty,
23 function, program, or activity transferred under that subsection
24 are transferred to the Department of Health Services;

25 (2) all property and records in the custody of an
26 entity listed in Subsection (a) of this section that are related to
27 a power, duty, function, program, or activity transferred under

1 that subsection and all funds appropriated by the legislature for
2 the power, duty, function, program, or activity shall be
3 transferred to the Department of Health Services; and

4 (3) all complaints, investigations, or contested
5 cases that are pending before an entity or the governing body of an
6 entity listed in Subsection (a) of this section and that are related
7 to a power, duty, function, program, or activity transferred under
8 that subsection are transferred without change in status to the
9 Department of Health Services.

10 (c) A rule or form adopted by an entity listed in Subsection
11 (a) of this section that relates to a power, duty, function,
12 program, or activity transferred under that subsection is a rule or
13 form of the Department of Health Services and remains in effect
14 until altered by the commissioner of health and human services.

15 (d) A reference in law to an entity listed in Subsection (a)
16 of this section that relates to a power, duty, function, program, or
17 activity transferred under that subsection means the Department of
18 Health Services. A reference in law to the governing body of an
19 entity listed in Subsection (a) of this section means the Health and
20 Human Services Commission or the commissioner of health and human
21 services.

22 (e) A license, permit, or certification in effect that was
23 issued by an entity listed in Subsection (a) of this section and
24 that relates to a power, duty, function, program, or activity
25 transferred under that subsection is continued in effect as a
26 license, permit, or certification of the Department of Health
27 Services.

1 SECTION 1.20. TRANSFERS TO THE DEPARTMENT OF PROTECTIVE AND
2 REGULATORY SERVICES. (a) On the date specified in the transition
3 plan required under Section 1.23 of this article, the following
4 powers, duties, functions, programs, and activities, other than
5 those related to rulemaking or policymaking or administrative
6 support services such as strategic planning and evaluation, audit,
7 legal, human resources, information resources, accounting,
8 purchasing, financial management, and contract management
9 services, are transferred to the Department of Protective and
10 Regulatory Services:

11 (1) except as provided by Sections 1.18 and 1.21 of
12 this article, all powers, duties, functions, programs, and
13 activities of the Texas Department of Human Services, including
14 those related to preventing family violence and providing services
15 to victims of family violence; and

16 (2) all powers, duties, functions, programs, and
17 activities of a state agency or entity abolished by Section 1.25 of
18 this article related to licensing and enforcing regulations
19 applicable to long-term care facilities.

20 (b) On the date specified by Subsection (a) of this section:

21 (1) all obligations and contracts of an entity listed
22 in Subsection (a) of this section that are related to a power, duty,
23 function, program, or activity transferred under that subsection
24 are transferred to the Department of Protective and Regulatory
25 Services;

26 (2) all property and records in the custody of an
27 entity listed in Subsection (a) of this section that are related to

1 a power, duty, function, program, or activity transferred under
2 that subsection and all funds appropriated by the legislature for
3 the power, duty, function, program, or activity shall be
4 transferred to the Department of Protective and Regulatory
5 Services; and

6 (3) all complaints, investigations, or contested
7 cases that are pending before an entity or the governing body of an
8 entity listed in Subsection (a) of this section and that are related
9 to a power, duty, function, program, or activity transferred under
10 that subsection are transferred without change in status to the
11 Department of Protective and Regulatory Services.

12 (c) A rule or form adopted by an entity listed in Subsection
13 (a) of this section that relates to a power, duty, function,
14 program, or activity transferred under that subsection is a rule or
15 form of the Department of Protective and Regulatory Services and
16 remains in effect until altered by the commissioner of health and
17 human services.

18 (d) A reference in law to an entity listed in Subsection (a)
19 of this section that relates to a power, duty, function, program, or
20 activity transferred under that subsection means the Department of
21 Protective and Regulatory Services. A reference in law to the
22 governing body of an entity listed in Subsection (a) of this section
23 means the Health and Human Services Commission or the commissioner
24 of health and human services.

25 (e) A license, permit, or certification in effect that was
26 issued by an entity listed in Subsection (a) of this section and
27 that relates to a power, duty, function, program, or activity

1 transferred under that subsection is continued in effect as a
2 license, permit, or certification of the Department of Protective
3 and Regulatory Services.

4 SECTION 1.21. TRANSFERS TO THE DEPARTMENT OF AGING,
5 COMMUNITY, DISABILITY, AND LONG-TERM CARE SERVICES. (a) On the
6 date specified in the transition plan required under Section 1.23
7 of this article, the following powers, duties, functions, programs,
8 and activities, other than those related to rulemaking or
9 policymaking, licensing and enforcement of regulations regarding
10 long-term care facilities, or administrative support services such
11 as strategic planning and evaluation, audit, legal, human
12 resources, information resources, accounting, purchasing,
13 financial management, and contract management services, are
14 transferred to the Department of Aging, Community, Disability, and
15 Long-Term Care Services:

16 (1) all powers, duties, functions, programs, and
17 activities of the Texas Department on Aging;

18 (2) except as provided by Section 1.18 of this
19 article, from the Texas Department of Human Services, all powers,
20 duties, functions, programs, and activities related to providing
21 long-term care services and community-based support and services;

22 (3) except as provided by Section 1.18 of this
23 article, all powers, duties, functions, programs, and activities of
24 the Texas Rehabilitation Commission;

25 (4) all powers, duties, functions, programs, and
26 activities of the Texas Commission for the Blind; and

27 (5) all powers, duties, functions, programs, and

1 activities of the Texas Department of Mental Health and Mental
2 Retardation related to providing mental retardation services,
3 including state school administration and services and community
4 residential services.

5 (b) On the date specified by Subsection (a) of this section:

6 (1) all obligations and contracts of an entity listed
7 in Subsection (a) of this section that are related to a power, duty,
8 function, program, or activity transferred under that subsection
9 are transferred to the Department of Aging, Community, Disability,
10 and Long-Term Care Services;

11 (2) all property and records in the custody of an
12 entity listed in Subsection (a) of this section that are related to
13 a power, duty, function, program, or activity transferred under
14 that subsection and all funds appropriated by the legislature for
15 the power, duty, function, program, or activity shall be
16 transferred to the Department of Aging, Community, Disability, and
17 Long-Term Care Services; and

18 (3) all complaints, investigations, or contested
19 cases that are pending before an entity or the governing body of an
20 entity listed in Subsection (a) of this section and that are related
21 to a power, duty, function, program, or activity transferred under
22 that subsection are transferred without change in status to the
23 Department of Aging, Community, Disability, and Long-Term Care
24 Services.

25 (c) A rule or form adopted by an entity listed in Subsection
26 (a) of this section that relates to a power, duty, function,
27 program, or activity transferred under that subsection is a rule or

1 form of the Department of Aging, Community, Disability, and
2 Long-Term Care Services and remains in effect until altered by the
3 commissioner of health and human services.

4 (d) A reference in law to an entity listed in Subsection (a)
5 of this section that relates to a power, duty, function, program, or
6 activity transferred under that subsection means the Department of
7 Aging, Community, Disability, and Long-Term Care Services. A
8 reference in law to the governing body of an entity listed in
9 Subsection (a) of this section means the Health and Human Services
10 Commission or the commissioner of health and human services.

11 (e) A license, permit, or certification in effect that was
12 issued by an entity listed in Subsection (a) of this section and
13 that relates to a power, duty, function, program, or activity
14 transferred under that subsection is continued in effect as a
15 license, permit, or certification of the Department of Aging,
16 Community, Disability, and Long-Term Care Services.

17 SECTION 1.22. FACILITATION OF TRANSFERS BY HEALTH AND HUMAN
18 SERVICES TRANSITION COUNCIL. (a) The Health and Human Services
19 Transition Council is created to facilitate the transfer of powers,
20 duties, functions, programs, and activities among the state's
21 health and human services agencies and the Health and Human
22 Services Commission as provided by this article with a minimal
23 negative effect on the delivery of those services in this state.

24 (b) The council is composed of 10 members, as follows:
25 (1) the commissioner of health and human services;
26 (2) two members of the senate, appointed by the
27 lieutenant governor not later than October 1, 2003;

1 (3) two members of the house of representatives,
2 appointed by the speaker of the house of representatives not later
3 than October 1, 2003; and

4 (4) five members of the public, appointed by the
5 governor not later than October 1, 2003.

6 (c) The commissioner of health and human services serves as
7 presiding officer. The members of the council shall elect any other
8 necessary officers.

9 (d) The council shall meet at the call of the presiding
10 officer.

11 (e) A member of the council serves at the will of the
12 appointing official.

13 (f) A member of the council may not receive compensation for
14 serving on the council but is entitled to reimbursement for travel
15 expenses incurred by the member while conducting the business of
16 the council as provided by the General Appropriations Act.

17 (g) The council, with assistance from the Health and Human
18 Services Commission and the health and human services agencies,
19 shall advise the commissioner of health and human services
20 concerning:

21 (1) the powers, duties, functions, programs, and
22 activities transferred under this article and the funds and
23 obligations that are related to the powers, duties, functions,
24 programs, or activities; and

25 (2) the transfer of the powers, duties, functions,
26 programs, activities, records, property, funds, obligations, and
27 employees by the entities listed in Sections 1.18, 1.19, 1.20, and

1 1.21 of this article in accordance with this article.

2 (h) The council is abolished December 31, 2004.

3 SECTION 1.23. TRANSITION PLAN. The transfer of powers,
4 duties, functions, programs, and activities under Sections 1.18,
5 1.19, 1.20, and 1.21 of this article to the Health and Human
6 Services Commission, the Department of Health Services, the
7 Department of Protective and Regulatory Services, and the
8 Department of Aging, Community, Disability, and Long-Term Care
9 Services, respectively, must be accomplished in accordance with a
10 schedule included in a transition plan developed by the
11 commissioner of health and human services and submitted to the
12 governor and the Legislative Budget Board not later than December
13 1, 2003. The commissioner shall provide to the governor and the
14 Legislative Budget Board transition plan status reports and updates
15 on at least a quarterly basis following submission of the initial
16 transition plan.

17 SECTION 1.24. APPLICABILITY OF FORMER LAW. An action
18 brought or proceeding commenced before the date of a transfer
19 prescribed by this article in accordance with the transition plan
20 required under Section 1.23 of this article, including a contested
21 case or a remand of an action or proceeding by a reviewing court, is
22 governed by the laws and rules applicable to the action or
23 proceeding before the transfer.

24 SECTION 1.25. ABOLITION OF STATE AGENCIES AND ENTITIES. (a)
25 The following state agencies and entities are abolished on the date
26 on which their respective powers, duties, functions, programs, and
27 activities are transferred under this article:

- 1 (1) the Interagency Council on Early Childhood
2 Intervention;
- 3 (2) the Texas Cancer Council;
- 4 (3) the Texas Commission for the Blind;
- 5 (4) the Texas Commission for the Deaf and Hard of
6 Hearing;
- 7 (5) the Texas Commission on Alcohol and Drug Abuse;
- 8 (6) the Texas Department of Health;
- 9 (7) the Texas Department of Human Services;
- 10 (8) the Texas Department of Mental Health and Mental
11 Retardation;
- 12 (9) the Texas Department on Aging;
- 13 (10) the Texas Health Care Information Council; and
- 14 (11) the Texas Rehabilitation Commission.

15 (b) The abolition of a state agency or entity listed in
16 Subsection (a) of this section and the transfer of its powers,
17 duties, functions, programs, activities, obligations, rights,
18 contracts, records, property, funds, and employees as provided by
19 this article do not affect or impair an act done, any obligation,
20 right, order, permit, certificate, rule, criterion, standard, or
21 requirement existing, or any penalty accrued under former law, and
22 that law remains in effect for any action concerning those matters.

23 SECTION 1.26. REPEAL. The following are repealed:

- 24 (1) Sections 531.0057, 531.034, and 531.0345,
25 Government Code;
- 26 (2) Sections 40.0225 and 40.023, Human Resources Code;
- 27 and

1 (3) Article 2, Chapter 1505, Acts of the 76th
2 Legislature, Regular Session, 1999.

3 SECTION 1.27. EFFECTIVE DATE. (a) Except as provided by
4 Subsection (b) of this section, this article takes effect September
5 1, 2003.

6 (b) The Department of Health Services and the Department of
7 Aging, Community, Disability, and Long-Term Care Services are
8 created on the date the governor appoints the executive director of
9 the respective agency.

10 ARTICLE 2. ADMINISTRATION, OPERATION, AND FINANCING OF
11 HEALTH AND HUMAN SERVICES PROGRAMS AND PROVISION OF
12 HEALTH AND HUMAN SERVICES

13 SECTION 2.01. Section 531.001, Government Code, is amended
14 by adding Subdivision (1-a) to read as follows:

15 (1-a) "Child health plan program" means the child
16 health plan program established under Chapters 62 and 63, Health
17 and Safety Code.

18 SECTION 2.02. (a) Subchapter A, Chapter 531, Government
19 Code, is amended by adding Section 531.017 to read as follows:

20 Sec. 531.017. PURCHASING DIVISION. (a) The commission
21 shall establish a purchasing division for the management of
22 administrative activities related to the purchasing functions of
23 the commission and the health and human services agencies.

24 (b) The purchasing division shall:

25 (1) seek to achieve targeted cost reductions, increase
26 process efficiencies, improve technological support and customer
27 services, and enhance purchasing support for each health and human

1 services agency; and

2 (2) if cost-effective, contract with private entities
3 to perform purchasing functions for the commission and the health
4 and human services agencies.

5 (b) Not later than January 1, 2004, the Health and Human
6 Services Commission shall develop and implement a plan to
7 consolidate the purchasing functions of the commission and health
8 and human services agencies in a purchasing division under Section
9 531.017, Government Code, as added by this section.

10 SECTION 2.03. (a) Subchapter B, Chapter 531, Government
11 Code, is amended by adding Section 531.0392 to read as follows:

12 Sec. 531.0392. RECOVERY OF CERTAIN THIRD-PARTY
13 REIMBURSEMENTS UNDER MEDICAID. (a) In this section, "dually
14 eligible individual" means an individual who is eligible to receive
15 health care benefits under both the Medicaid and Medicare programs.

16 (b) The commission shall obtain Medicaid reimbursement from
17 each fiscal intermediary who makes a payment to a service provider
18 on behalf of the Medicare program, including a reimbursement for a
19 payment made to a home health services provider or nursing facility
20 for services rendered to a dually eligible individual.

21 (b) Not later than September 1, 2003, the Health and Human
22 Services Commission shall request and actively pursue any necessary
23 waivers from a federal agency or other appropriate entity to enable
24 the commission to combine Medicaid and Medicare services for
25 persons who are eligible for both Medicaid and Medicare when the
26 combination of services would be cost-effective for the state.

27 SECTION 2.04. Subchapter B, Chapter 531, Government Code,

1 is amended by adding Section 531.063 to read as follows:

2 Sec. 531.063. CALL CENTER. (a) The commission, by rule,
3 shall establish a call center for purposes of determining and
4 certifying or recertifying a person's eligibility and need for
5 services related to the programs listed under Section 531.008(c),
6 if cost-effective.

7 (b) The commission shall contract with a private entity for
8 the operation of a call center required by this section unless the
9 commission determines that contracting with a private entity would
10 not be cost-effective.

11 SECTION 2.05. (a) Subchapter B, Chapter 531, Government
12 Code, is amended by adding Section 531.065 to read as follows:

13 Sec. 531.065. CONSOLIDATION AND COORDINATION OF HEALTH
14 INSURANCE PREMIUM PAYMENT REIMBURSEMENT PROGRAMS. (a) The
15 commission shall develop and implement a plan to consolidate and
16 coordinate the administration of the health insurance premium
17 payment reimbursement programs prescribed by Section 62.059,
18 Health and Safety Code, and Section 32.0422, Human Resources Code.

19 (b) If cost-effective, the commission may contract with a
20 private entity to assist the commission in developing and
21 implementing a plan required by this section.

22 (b) Section 62.059(i), Health and Safety Code, and Section
23 32.0422(m), Human Resources Code, are repealed.

24 (c) Not later than January 1, 2004, the Health and Human
25 Services Commission shall develop and implement a plan to
26 consolidate and coordinate the administration of health insurance
27 premium payment reimbursement programs as required by Section

1 531.065, Government Code, as added by this section.

2 SECTION 2.06. Subchapter B, Chapter 531, Government Code,
3 is amended by adding Section 531.067 to read as follows:

4 Sec. 531.067. PUBLIC ASSISTANCE HEALTH BENEFIT REVIEW AND
5 DESIGN COMMITTEE. (a) The commission shall appoint a Public
6 Assistance Health Benefit Review and Design Committee. The
7 committee consists of nine representatives of health care providers
8 participating in the Medicaid program or the child health plan
9 program, or both. The committee membership must include at least
10 three representatives from each program.

11 (b) The commissioner shall designate one member to serve as
12 presiding officer for a term of two years.

13 (c) The committee shall meet at the call of the presiding
14 officer.

15 (d) The committee shall review and provide recommendations
16 to the commission regarding health benefits and coverages provided
17 under the state Medicaid program, the child health plan program,
18 and any other income-based health care program administered by the
19 commission or a health and human services agency. In performing its
20 duties under this subsection, the committee must:

21 (1) review prescription drug benefits provided under
22 each of the programs; and

23 (2) review procedures for addressing high utilization
24 of benefits by recipients.

25 (e) The commission shall provide administrative support and
26 resources as necessary for the committee to perform its duties
27 under this section.

1 (f) Section 2110.008 does not apply to the committee.

2 SECTION 2.07. Subchapter B, Chapter 531, Government Code,
3 is amended by adding Section 531.068 to read as follows:

4 Sec. 531.068. MEDICAID OR OTHER HEALTH BENEFIT COVERAGE.

5 In adopting rules or standards governing the state Medicaid program
6 or rules or standards for the development or implementation of
7 health benefit coverage for a program administered by the
8 commission or a health and human services agency, the commission
9 and each health and human services agency, as appropriate, may take
10 into consideration any recommendation made with respect to health
11 benefits provided under their respective programs or the state
12 Medicaid program by the Public Assistance Health Benefit Review and
13 Design Committee established under Section 531.067.

14 SECTION 2.08. Subchapter B, Chapter 531, Government Code,
15 is amended by adding Section 531.069 to read as follows:

16 Sec. 531.069. PERIODIC REVIEW OF VENDOR DRUG PROGRAM. (a)

17 The commission shall periodically review all purchases made under
18 the vendor drug program to determine the cost-effectiveness of
19 including a component for prescription drug benefits in any
20 capitation rate paid by the state under a Medicaid managed care
21 program or the child health plan program.

22 (b) In making the determination required by Subsection (a),
23 the commission shall consider the value of any prescription drug
24 rebates received by the state.

25 SECTION 2.09. (a) Subchapter B, Chapter 531, Government
26 Code, is amended by adding Section 531.070 to read as follows:

27 Sec. 531.070. SUPPLEMENTAL REBATES. (a) In this section:

1 (1) "Labeler" means a person that:

2 (A) has a labeler code from the United States
3 Food and Drug Administration under 21 C.F.R. Section 207.20; and

4 (B) receives prescription drugs from a
5 manufacturer or wholesaler and repackages those drugs for later
6 retail sale.

7 (2) "Manufacturer" means a manufacturer of
8 prescription drugs as defined by 42 U.S.C. Section 1396r-8(k)(5)
9 and its subsequent amendments, including a subsidiary or affiliate
10 of a manufacturer.

11 (3) "Wholesaler" means a person licensed under
12 Subchapter I, Chapter 431, Health and Safety Code.

13 (b) Subject to Subsection (c), the commission shall
14 negotiate with manufacturers and labelers, including generic
15 manufacturers and labelers, to obtain supplemental rebates for
16 prescription drugs sold in this state.

17 (c) The commission may by contract authorize a private
18 entity to negotiate with manufacturers and labelers on behalf of
19 the commission.

20 (d) A manufacturer or labeler that sells prescription drugs
21 in this state may voluntarily negotiate with the commission and
22 enter into an agreement to provide supplemental rebates for
23 prescription drugs provided under:

24 (1) the Medicaid vendor drug program in excess of the
25 Medicaid rebates required by 42 U.S.C. Section 1396r-8 and its
26 subsequent amendments;

27 (2) the child health plan program; and

1 (3) any other state program administered by the
2 commission, including community mental health centers and state
3 mental health hospitals.

4 (e) In negotiating terms for a supplemental rebate amount,
5 the commission shall consider:

6 (1) rebates calculated under the Medicaid rebate
7 program in accordance with 42 U.S.C. Section 1396r-8 and its
8 subsequent amendments; and

9 (2) any other available information on prescription
10 drug prices or rebates.

11 (f) Each year the commission shall provide a written report
12 to the legislature and the governor. The report shall cover:

13 (1) the cost of administering the preferred drug lists
14 adopted under Section 531.072;

15 (2) an analysis of the utilization trends for medical
16 services provided by the state and any correlation to the preferred
17 drug lists;

18 (3) an analysis of the effect on health outcomes and
19 results for recipients; and

20 (4) statistical information related to the number of
21 approvals granted or denied.

22 (b) Not later than January 1, 2004, the Health and Human
23 Services Commission shall implement Section 531.070, Government
24 Code, as added by this section.

25 SECTION 2.10. Subchapter B, Chapter 531, Government Code,
26 is amended by adding Section 531.071 to read as follows:

27 Sec. 531.071. CONFIDENTIALITY OF INFORMATION REGARDING

1 DRUG REBATES, PRICING, AND NEGOTIATIONS. (a) Information obtained
2 or maintained by the commission regarding prescription drug rebate
3 negotiations or a supplemental medical assistance or other rebate
4 agreement, including trade secrets, rebate amount, rebate
5 percentage, and manufacturer or labeler pricing, is confidential
6 and not subject to disclosure under Chapter 552.

7 (b) Information that is confidential under Subsection (a)
8 includes information described by Subsection (a) that is obtained
9 or maintained by the commission in connection with the Medicaid
10 vendor drug program, the child health plan program, the kidney
11 health care program, or the children with special health care needs
12 program.

13 SECTION 2.11. (a) Subchapter B, Chapter 531, Government
14 Code, is amended by adding Section 531.072 to read as follows:

15 Sec. 531.072. PREFERRED DRUG LISTS FOR MEDICAID AND CHILD
16 HEALTH PLAN PROGRAMS. (a) In a manner that complies with
17 applicable state and federal law, the commission shall adopt
18 preferred drug lists for the Medicaid vendor drug program and for
19 prescription drugs purchased through the child health plan program.

20 (b) The preferred drug lists may contain only drugs provided
21 by a manufacturer or labeler that reaches an agreement with the
22 commission on supplemental rebates under Section 531.070.

23 (c) In making a decision regarding the placement of a drug
24 on each of the preferred drug lists, the commission shall consider:

25 (1) the recommendations of the Pharmaceutical and
26 Therapeutics Committee established under Section 531.074;

27 (2) the clinical efficacy of the drug; and

1 (3) the price of competing drugs after deducting any
2 federal and state rebate amounts.

3 (d) The commission shall provide for distribution of
4 current copies of the preferred drug lists to all appropriate
5 health care providers in this state before those changes go into
6 effect.

7 (e) In this subsection, "labeler" and "manufacturer" have
8 the meanings assigned by Section 531.070. The commission shall
9 ensure that:

10 (1) a manufacturer or labeler may submit written
11 evidence supporting the inclusion of a drug on the preferred drug
12 lists before a supplemental agreement is reached with the
13 commission; and

14 (2) any drug that has been approved or has had any of
15 its particular uses approved by the United States Food and Drug
16 Administration under a priority review classification will be
17 reviewed by the Pharmaceutical and Therapeutics Committee at the
18 next regularly scheduled meeting of the committee. On receiving
19 notice from a manufacturer or labeler of the availability of a new
20 product, the commission, to the extent possible, shall schedule a
21 review for the product at the next regularly scheduled meeting of
22 the committee.

23 (f) A recipient of drug benefits under the Medicaid vendor
24 drug program may appeal a denial of prior authorization under
25 Section 531.073 of a covered drug or covered dosage through the
26 Medicaid fair hearing process.

27 (b) Not later than March 1, 2004, the Health and Human

1 Services Commission shall adopt the preferred drug lists as
2 required by Section 531.072, Government Code, as added by this
3 section.

4 SECTION 2.12. Subchapter B, Chapter 531, Government Code,
5 is amended by adding Section 531.073 to read as follows:

6 Sec. 531.073. PRIOR AUTHORIZATION FOR CERTAIN PRESCRIPTION
7 DRUGS. (a) The commission, in its rules and standards governing
8 the Medicaid vendor drug program and the child health plan program,
9 shall require prior authorization for the reimbursement of a drug
10 that is not included in the appropriate preferred drug list adopted
11 under Section 531.072, except for any drug exempted from prior
12 authorization requirements by federal law.

13 (b) The commission shall establish procedures for the prior
14 authorization requirement under the Medicaid vendor drug program to
15 ensure that the requirements of 42 U.S.C. Section 1396r-8(d)(5) and
16 its subsequent amendments are met. Specifically, the procedures
17 must ensure that:

18 (1) there will be a response to a request for prior
19 authorization by telephone or other telecommunications device
20 within 24 hours after receipt of a request for prior authorization;
21 and

22 (2) a 72-hour supply of the drug prescribed will be
23 provided in an emergency or if the commission does not provide a
24 response within the time required by Subdivision (1).

25 (c) The commission shall ensure that a prescription drug
26 prescribed for a recipient under the child health plan program, the
27 Medicaid program, or another state program administered by the

1 commission or for a person who becomes eligible under the child
2 health plan program, the Medicaid program, or another state program
3 administered by the commission is not subject to any requirement
4 for prior authorization under this section unless the recipient has
5 exhausted all the prescription, including any authorized refills,
6 or a period prescribed by the commission has expired, whichever
7 occurs first.

8 (d) The commission shall implement procedures to ensure
9 that a recipient under the child health plan program, the Medicaid
10 program, or another state program administered by the commission or
11 a person who becomes eligible under the child health plan program,
12 the Medicaid program, or another state program administered by the
13 commission receives continuity of care in relation to certain
14 prescriptions identified by the commission.

15 (e) The commission may by contract authorize a private
16 entity to administer the prior authorization requirements imposed
17 by this section on behalf of the commission.

18 SECTION 2.13. (a) Subchapter B, Chapter 531, Government
19 Code, is amended by adding Section 531.074 to read as follows:

20 Sec. 531.074. PHARMACEUTICAL AND THERAPEUTICS COMMITTEE.

21 (a) The Pharmaceutical and Therapeutics Committee is established
22 for the purposes of developing recommendations for a preferred drug
23 list for the Medicaid vendor drug program and a preferred drug list
24 for the child health plan program.

25 (b) The committee consists of the following members
26 appointed by the governor:

27 (1) six physicians licensed under Subtitle B, Title 3,

1 Occupations Code, and participating in the Medicaid program; and
2 (2) five pharmacists licensed under Subtitle J, Title
3 3, Occupations Code, and participating in the Medicaid vendor drug
4 program.

5 (c) In making appointments to the committee under
6 Subsection (b), the governor shall ensure that the committee
7 includes physicians and pharmacists who:

8 (1) represent different specialties and provide
9 services to all segments of the Medicaid program's diverse
10 population; and

11 (2) have experience in either developing or practicing
12 under a preferred drug list.

13 (d) A member of the committee is appointed for a two-year
14 term and may serve more than one term.

15 (e) The governor shall appoint a physician to be the
16 presiding officer of the committee. The presiding officer serves
17 at the pleasure of the governor.

18 (f) The committee shall meet at least monthly during the
19 six-month period following establishment of the committee to enable
20 the committee to develop recommendations for the initial preferred
21 drug lists. After that period, the committee shall meet at least
22 quarterly and at other times at the call of the presiding officer or
23 a majority of the committee members.

24 (g) A member of the committee may not receive compensation
25 for serving on the committee but is entitled to reimbursement for
26 reasonable and necessary travel expenses incurred by the member
27 while conducting the business of the committee, as provided by the

1 General Appropriations Act.

2 (h) In developing its recommendations for the preferred
3 drug lists, the committee shall consider the clinical efficacy,
4 safety, and cost-effectiveness of a product.

5 (i) The commission shall adopt rules governing the
6 operation of the committee, including rules governing the
7 procedures used by the committee for providing notice of a meeting
8 and rules prohibiting the committee from discussing confidential
9 information described by Section 531.071 in a public meeting. The
10 committee shall comply with the rules adopted under this
11 subsection.

12 (j) To the extent feasible, the committee shall review all
13 drug classes included in the preferred drug lists adopted under
14 Section 531.072 at least once every 12 months and may recommend
15 inclusions to and exclusions from the list to ensure that the list
16 provides for cost-effective medically appropriate drug therapies
17 for Medicaid recipients and children receiving health benefits
18 coverage under the child health plan program.

19 (k) The commission shall provide administrative support and
20 resources as necessary for the committee to perform its duties.

21 (l) Chapter 2110 does not apply to the committee.

22 (b) Not later than November 1, 2003, the governor shall
23 appoint members to the Pharmaceutical and Therapeutics Committee
24 established under Section 531.074, Government Code, as added by
25 this section.

26 (c) Not later than January 1, 2004, the Pharmaceutical and
27 Therapeutics Committee established under Section 531.074,

1 Government Code, as added by this section, shall submit
2 recommendations for the preferred drug lists the committee is
3 required to develop under that section to the Health and Human
4 Services Commission.

5 SECTION 2.14. Subchapter B, Chapter 531, Government Code,
6 is amended by adding Section 531.075 to read as follows:

7 Sec. 531.075. PRIOR AUTHORIZATION FOR HIGH-COST MEDICAL
8 SERVICES. The commission may evaluate and implement, as
9 appropriate, procedures, policies, and methodologies to require
10 prior authorization for high-cost medical services and procedures
11 and may contract with qualified service providers or organizations
12 to perform those functions.

13 SECTION 2.15. Section 531.102, Government Code, is amended
14 by amending Subsections (a) and (d) and adding Subsections (f) and
15 (g) to read as follows:

16 (a) The commission, through the commission's office of
17 investigations and enforcement, is responsible for the
18 investigation of fraud and abuse in the provision of health and
19 human services and the enforcement of state law relating to the
20 provision of those services. The commission may obtain any
21 information or technology necessary to enable the commission to
22 meet its responsibility under this subsection.

23 (d) The commission may require employees of health and human
24 services agencies to provide assistance to the commission in
25 connection with the commission's duties relating to the
26 investigation of fraud and abuse in the provision of health and
27 human services.

1 (f) Notwithstanding any other law, for purposes of
2 obtaining information relevant to the office's duties from a law
3 enforcement agency, prosecutor, or governmental entity, the office
4 is considered to be a law enforcement agency and may obtain the
5 information in the same manner as another law enforcement agency.
6 Information obtained by the office under this subsection that deals
7 with the detection, investigation, or prosecution of crime is
8 excepted from the requirements of Section 552.021 in the manner
9 provided by Section 552.108.

10 (g) In connection with the investigation of fraud and abuse
11 in the provision of health and human services, the office may issue
12 a subpoena throughout this state to compel the attendance and
13 testimony of a witness or production of records. The subpoena may
14 compel attendance or production at the office or at another place
15 designated in the subpoena.

16 SECTION 2.16. Subchapter C, Chapter 531, Government Code,
17 is amended by adding Section 531.1021 to read as follows:

18 Sec. 531.1021. SEIZURE OF ASSETS. (a) The commission,
19 through the commission's office of investigations and enforcement,
20 may seize assets owned by a person if:

21 (1) the commission determines through an
22 investigation that there is a substantial likelihood that the
23 person has engaged in conduct that constitutes fraud or abuse under
24 the medical assistance program; and

25 (2) the seizure of assets is necessary to protect the
26 commission's ability to recover amounts wrongfully obtained by the
27 person and associated damages and penalties to which the commission

1 may otherwise be entitled by law.

2 (b) The commission shall provide a person whose assets are
3 seized with an opportunity for a hearing at which the person may
4 contest the seizure.

5 (c) The commission may not dispose of seized assets until:

6 (1) the person is determined to have engaged in
7 conduct that constitutes fraud or abuse under the medical
8 assistance program; and

9 (2) the commission's entitlement to the assets is
10 confirmed in accordance with due process.

11 SECTION 2.17. (a) Section 531.103, Government Code, is
12 amended by amending Subsections (a) and (e) and adding Subsections
13 (c-1) and (e-1) to read as follows:

14 (a) The commission and the office of the attorney general
15 shall enter into a memorandum of understanding to develop and
16 implement joint written procedures for processing cases of
17 suspected fraud, waste, or abuse under the state Medicaid program.
18 The memorandum of understanding shall require:

19 (1) the commission and the office of the attorney
20 general to set priorities and guidelines for referring cases to
21 appropriate state agencies for investigation to enhance deterrence
22 of fraud, waste, or abuse in the program and maximize the imposition
23 of penalties, the recovery of money, and the successful prosecution
24 of cases;

25 (1-a) the commission to refer each case of suspected
26 provider fraud, waste, or abuse to the office of the attorney
27 general not later than the 10th business day after the date the

1 commission determines that the existence of fraud, waste, or abuse,
2 is reasonably indicated;

3 (2) the commission to keep detailed records for cases
4 processed by the commission or the office of the attorney general,
5 including information on the total number of cases processed and,
6 for each case:

7 (A) the agency and division to which the case is
8 referred for investigation;

9 (B) the date on which the case is referred; and

10 (C) the nature of the suspected fraud, waste, or
11 abuse;

12 (3) the commission to notify each appropriate division
13 of the office of the attorney general of each case referred by the
14 commission;

15 (4) the office of the attorney general to ensure that
16 information relating to each case investigated by that office is
17 available to each division of the office with responsibility for
18 investigating suspected fraud, waste, or abuse;

19 (5) the office of the attorney general to notify the
20 commission of each case the attorney general declines to prosecute
21 or prosecutes unsuccessfully;

22 (6) representatives of the commission and of the
23 office of the attorney general to meet not less than quarterly to
24 share case information and determine the appropriate agency and
25 division to investigate each case; and

26 (7) the commission and the office of the attorney
27 general to submit information requested by the comptroller about

1 each resolved case for the comptroller's use in improving fraud
2 detection.

3 (c-1) In addition to the report required by Subsection (c),
4 the office of the attorney general, not later than November 1 of
5 each year, shall prepare and submit to the governor, the
6 legislature, and the comptroller a report that specifically
7 addresses the activities of the attorney general's Medicaid fraud
8 control unit and civil Medicaid fraud section. The attorney
9 general shall consult with the comptroller regarding the format of
10 the report and make reasonable efforts to provide the report in the
11 format requested by the comptroller. The report must specify, for
12 the Medicaid fraud control unit and the civil Medicaid fraud
13 section, respectively, the following information:

- 14 (1) total agency expenditures;
15 (2) caseloads;
16 (3) the length of time required to complete each case
17 through each phase of activity;
18 (4) recoveries and penalties arising from each case;
19 (5) difficulties in operations; and
20 (6) any other information considered relevant by the
21 attorney general to an analysis of the effectiveness of the unit and
22 section.

23 (e) The commission shall refer a case of suspected fraud,
24 waste, or abuse under the state Medicaid program to the appropriate
25 United States attorney, district attorney, county attorney, city
26 attorney, or private collection agency if the attorney general
27 fails to act within 30 days of referral of the case to the office of

1 the attorney general. A failure by the attorney general to act
2 within 30 days constitutes approval by the attorney general under
3 Section 2107.003.

4 (e-1) In addition to the provisions required by Subsection
5 (a), the memorandum of understanding required by this section must
6 identify circumstances under which the commission may refer a case
7 of suspected fraud, waste, or abuse under the state Medicaid
8 program directly to the appropriate United States attorney,
9 district attorney, county attorney, city attorney, or private
10 collection agency. The memorandum of understanding must require
11 the commission to provide prompt notice to the office of the
12 attorney general of each case referred in accordance with this
13 subsection. A case referred in accordance with this subsection is
14 considered approved by the attorney general under Section 2107.003.
15 The memorandum of understanding must also include:

16 (1) procedures to facilitate the referral of cases
17 directly to the office of the attorney general; and

18 (2) provisions for the colocation of employees of the
19 office of attorney general, including attorneys and investigators,
20 with employees of the commission administering the commission's
21 office of investigations and enforcement.

22 (b) Not later than December 1, 2003, the office of the
23 attorney general and the Health and Human Services Commission shall
24 amend the memorandum of understanding required by Section 531.103,
25 Government Code, as necessary to comply with Sections
26 531.103(a)(1-a) and (e-1), Government Code, as added by this
27 section.

1 SECTION 2.18. (a) Subchapter C, Chapter 531, Government
2 Code, is amended by adding Section 531.1063 to read as follows:

3 Sec. 531.1063. MEDICAID FRAUD PILOT PROGRAM. (a) The
4 commission, with cooperation from the Texas Department of Human
5 Services, shall develop and implement a front-end Medicaid fraud
6 reduction pilot program in one or more counties in this state to
7 address provider fraud and appropriate cases of third-party and
8 recipient fraud.

9 (b) The program must be designed to reduce:

10 (1) the number of fraud cases arising from
11 authentication fraud and abuse;

12 (2) the total amount of Medicaid expenditures; and

13 (3) the number of fraudulent participants.

14 (c) The program must include:

15 (1) an integrated front-end smart card;

16 (2) secure mathematical algorithm fingerprint-imaging
17 and the use of any existing state database of fingerprint images
18 developed in connection with the financial assistance program under
19 Chapter 31, Human Resources Code;

20 (3) a real-time monitoring system that resides at the
21 point of contact with Medicaid providers, recipients,
22 participating pharmacies, hospitals, and appropriate third-party
23 participants;

24 (4) system components that provide for individual
25 smart cards, smart cards and biometric readers that are based at the
26 provider, pharmacy, or hospital, and local and systemwide software
27 that is Health Level 7 (HL7) compliant; and

1 (5) the ability to add other components to the program
2 and incorporate clinically oriented software to increase the
3 portability of medical information throughout the Medicaid system.

4 (d) To ensure reliability, the program and all associated
5 hardware and software must be initially tested in a physician
6 environment in this state and determined to be successful in
7 authenticating recipients, providers, and provider staff members
8 before the program is implemented throughout the program area.

9 (e) The commission may extend the program to additional
10 counties if the commission determines that expansion would be
11 cost-effective.

12 (b) Not later than January 1, 2004, the Health and Human
13 Services Commission shall begin implementation of the program
14 required by Section 531.1063, Government Code, as added by this
15 section.

16 (c) Not later than February 1, 2005, the Health and Human
17 Services Commission shall report to the governor, the lieutenant
18 governor, and the speaker of the house of representatives regarding
19 the program required by Section 531.1063, Government Code, as added
20 by this section. The report must include:

21 (1) an identification and evaluation of the benefits
22 of the program; and

23 (2) recommendations regarding expanding the program
24 statewide.

25 SECTION 2.19. Section 531.107(b), Government Code, is
26 amended to read as follows:

27 (b) The task force is composed of a representative of the:

- 1 (1) attorney general's office, appointed by the
2 attorney general;
- 3 (2) comptroller's office, appointed by the
4 comptroller;
- 5 (3) Department of Public Safety, appointed by the
6 public safety director;
- 7 (4) state auditor's office, appointed by the state
8 auditor;
- 9 (5) commission, appointed by the commissioner of
10 health and human services;
- 11 (6) Texas Department of Human Services, appointed by
12 the commissioner of human services; ~~and~~
- 13 (7) Texas Department of Insurance, appointed by the
14 commissioner of insurance; and
- 15 (8) Texas Department of Health, appointed by the
16 commissioner of public health.

17 SECTION 2.20. (a) Subchapter C, Chapter 531, Government
18 Code, is amended by adding Section 531.113 to read as follows:

19 Sec. 531.113. MANAGED CARE ORGANIZATIONS: SPECIAL
20 INVESTIGATIVE UNITS OR CONTRACTS. (a) Each managed care
21 organization that provides or arranges for the provision of health
22 care services to an individual under a government-funded program,
23 including the Medicaid program and the child health plan program,
24 shall:

- 25 (1) establish and maintain a special investigative
26 unit within the managed care organization to investigate fraudulent
27 claims and other types of program abuse by recipients and service

1 providers; or

2 (2) contract with another entity for the investigation
3 of fraudulent claims and other types of program abuse by recipients
4 and service providers.

5 (b) Each managed care organization subject to this section
6 shall adopt a plan to prevent and reduce fraud and abuse and
7 annually file that plan with the commission's office of
8 investigations and enforcement for approval. The plan must
9 include:

10 (1) a description of the managed care organization's
11 procedures for detecting and investigating possible acts of fraud
12 or abuse;

13 (2) a description of the managed care organization's
14 procedures for the mandatory reporting of possible acts of fraud or
15 abuse to the commission's office of investigations and enforcement;

16 (3) a description of the managed care organization's
17 procedures for educating and training personnel to prevent fraud
18 and abuse;

19 (4) the name, address, telephone number, and fax
20 number of the individual responsible for carrying out the plan;

21 (5) a description or chart outlining the
22 organizational arrangement of the managed care organization's
23 personnel responsible for investigating and reporting possible
24 acts of fraud or abuse;

25 (6) a detailed description of the results of
26 investigations of fraud and abuse conducted by the managed care
27 organization's special investigative unit or the entity with which

1 the managed care organization contracts under Subsection (a)(2);
2 and

3 (7) provisions for maintaining the confidentiality of
4 any patient information relevant to an investigation of fraud or
5 abuse.

6 (c) If a managed care organization contracts for the
7 investigation of fraudulent claims and other types of program abuse
8 by recipients and service providers under Subsection (a)(2), the
9 managed care organization shall file with the commission's office
10 of investigations and enforcement:

11 (1) a copy of the written contract;

12 (2) the names, addresses, telephone numbers, and fax
13 numbers of the principals of the entity with which the managed care
14 organization has contracted; and

15 (3) a description of the qualifications of the
16 principals of the entity with which the managed care organization
17 has contracted.

18 (d) The commission's office of investigations and
19 enforcement may review the records of a managed care organization
20 to determine compliance with this section.

21 (e) The commissioner shall adopt rules as necessary to
22 accomplish the purposes of this section.

23 (b) A managed care organization subject to Section 531.113,
24 Government Code, as added by this section, shall comply with the
25 requirements of that section not later than September 1, 2004.

26 SECTION 2.21. (a) Subchapter C, Chapter 531, Government
27 Code, is amended by adding Section 531.114 to read as follows:

1 Sec. 531.114. FINANCIAL ASSISTANCE FRAUD. (a) For
2 purposes of establishing or maintaining the eligibility of a person
3 and the person's family for financial assistance under Chapter 31,
4 Human Resources Code, or for purposes of increasing or preventing a
5 reduction in the amount of that assistance, a person may not
6 intentionally:

7 (1) make a statement that the person knows is false or
8 misleading;

9 (2) misrepresent, conceal, or withhold a fact; or

10 (3) knowingly misrepresent a statement as being true.

11 (b) If after an investigation the commission determines
12 that a person violated Subsection (a), the commission shall:

13 (1) notify the person of the alleged violation not
14 later than the 30th day after the date the commission completes the
15 investigation and provide the person with an opportunity for a
16 hearing on the matter; or

17 (2) refer the matter to the appropriate prosecuting
18 attorney for prosecution.

19 (c) If a person waives the right to a hearing or if a hearing
20 officer at an administrative hearing held under this section
21 determines that a person violated Subsection (a), the person is
22 ineligible to receive financial assistance as provided by
23 Subsection (d). A person who a hearing officer determines violated
24 Subsection (a) may appeal that determination by filing a petition
25 in the district court in the county in which the violation occurred
26 not later than the 30th day after the date the hearing officer made
27 the determination.

1 (d) A person determined under Subsection (c) to have
2 violated Subsection (a) is not eligible for financial assistance:

3 (1) before the first anniversary of the date of that
4 determination, if the person has no previous violations; and

5 (2) permanently, if the person was previously
6 determined to have committed a violation.

7 (e) If a person is convicted of a state or federal offense
8 for conduct described by Subsection (a), or if the person is granted
9 deferred adjudication or placed on community supervision for that
10 conduct, the person is permanently disqualified from receiving
11 financial assistance.

12 (f) This section does not affect the eligibility for
13 financial assistance of any other member of the household of a
14 person ineligible as a result of Subsection (d) or (e).

15 (g) The commission shall adopt rules as necessary to
16 implement this section.

17 (b) Section 531.114, Government Code, as added by this
18 section, applies only to conduct occurring on or after the
19 effective date of this section. Conduct occurring before the
20 effective date of this section is governed by the law in effect on
21 the date the conduct occurred, and the former law is continued in
22 effect for that purpose.

23 SECTION 2.22. Subchapter C, Chapter 531, Government Code,
24 is amended by adding Section 531.115 to read as follows:

25 Sec. 531.115. FEDERAL FELONY MATCH. The commission shall
26 develop and implement a system to cross-reference data collected
27 for the programs listed under Section 531.008(c) with the list of

1 fugitive felons maintained by the federal government.

2 SECTION 2.23. Subchapter A, Chapter 533, Government Code,
3 is amended by adding Section 533.0025 to read as follows:

4 Sec. 533.0025. DELIVERY OF SERVICES. (a) In this section,
5 "medical assistance" has the meaning assigned by Section 32.003,
6 Human Resources Code.

7 (b) Except as otherwise provided by this section and
8 notwithstanding any other law, the commission shall provide medical
9 assistance through the most cost-effective model of Medicaid
10 managed care as determined by the commission. If the commission
11 determines that it is more cost-effective, the commission may
12 provide medical assistance in a certain part of this state or to a
13 certain population of recipients using:

14 (1) a health maintenance organization model,
15 including Medicaid Star + Plus pilot programs;

16 (2) a primary care case management model;

17 (3) a prepaid health plan model;

18 (4) an exclusive provider organization model; or

19 (5) another Medicaid managed care model or
20 arrangement.

21 (c) In determining whether a model or arrangement described
22 by Subsection (b) is more cost-effective, the commissioner must
23 consider:

24 (1) the scope, duration, and types of health benefits
25 or services to be provided in a certain part of this state or to a
26 certain population of recipients;

27 (2) administrative costs necessary to meet federal and

1 state statutory and regulatory requirements;

2 (3) the anticipated effect of market competition
3 associated with the configuration of Medicaid service delivery
4 models determined by the commission; and

5 (4) the gain or loss to this state of a tax collected
6 under Article 4.11, Insurance Code.

7 (d) If the commission determines that it is not more
8 cost-effective to use a Medicaid managed care model to provide
9 certain types of medical assistance in a certain area or to certain
10 medical assistance recipients as prescribed by this section, the
11 commission shall provide medical assistance through a traditional
12 fee-for-service arrangement.

13 SECTION 2.24. Subchapter A, Chapter 533, Government Code,
14 is amended by adding Section 533.0132 to read as follows:

15 Sec. 533.0132. STATE TAXES. The commission shall ensure
16 that any experience rebate or profit sharing for managed care
17 organizations is calculated by treating premium, maintenance, and
18 other taxes under the Insurance Code and any other taxes payable to
19 this state as allowable expenses for purposes of determining the
20 amount of the experience rebate or profit sharing.

21 SECTION 2.25. Sections 403.105(a) and (c), Government Code,
22 are amended to read as follows:

23 (a) The permanent fund for health and tobacco education and
24 enforcement is a dedicated account in the general revenue fund. The
25 fund is composed of:

26 (1) money transferred to the fund at the direction of
27 the legislature;

1 (2) gifts and grants contributed to the fund; and

2 (3) the available earnings of the fund determined in
3 accordance with Section 403.1068.

4 (c) The available earnings of the fund may be appropriated
5 to the Texas Department of Health for:

6 (1) programs to reduce the use of cigarettes and
7 tobacco products in this state, including:

8 (A) [~~(1)~~] smoking cessation programs;

9 (B) [~~(2)~~] enforcement of Subchapters H, K, and N,
10 Chapter 161, Health and Safety Code, or other laws relating to
11 distribution of cigarettes or tobacco products to minors or use of
12 cigarettes or tobacco products by minors;

13 (C) [~~(3)~~] public awareness programs relating to
14 use of cigarettes and tobacco products, including general
15 educational programs and programs directed toward youth; and

16 (D) [~~(4)~~] specific programs for communities
17 traditionally targeted, by advertising and other means, by
18 companies that sell cigarettes or tobacco products; and

19 (2) the provision of coordinated essential public
20 health services administered by the department.

21 SECTION 2.26. The heading to Section 403.105, Government
22 Code, is amended to read as follows:

23 Sec. 403.105. PERMANENT FUND FOR HEALTH AND TOBACCO
24 EDUCATION AND ENFORCEMENT.

25 SECTION 2.27. Section 403.1055(c), Government Code, is
26 amended to read as follows:

27 (c) The available earnings of the fund may be appropriated

1 to:

2 (1) the Texas Department of Health for the purpose of:

3 (A) developing and demonstrating cost-effective
4 prevention and intervention strategies for improving health
5 outcomes for children and the public;

6 (B) [~~and for~~] providing grants to local
7 communities to address specific public health priorities,
8 including sickle cell anemia, diabetes, high blood pressure,
9 cancer, heart attack, stroke, keloid tissue and scarring, and
10 respiratory disease; ~~]~~ and

11 (C) [~~for~~] providing grants to local communities
12 for essential public health services as defined in the Health and
13 Safety Code; and

14 (2) the Interagency Council on Early Childhood
15 Intervention to provide intervention services for children with
16 developmental delay or who have a high probability of developing
17 developmental delay and the families of those children.

18 SECTION 2.28. Sections 403.1065(a) and (c), Government
19 Code, are amended to read as follows:

20 (a) The permanent fund for rural health facilities and
21 health centers [~~facility capital improvement~~] is a dedicated
22 account in the general revenue fund. The fund is composed of:

23 (1) money transferred to the fund at the direction of
24 the legislature;

25 (2) payments of interest and principal on loans made
26 under Subchapter H [~~G~~], Chapter 487 [~~106~~], [~~Health and Safety~~
27 ~~Code~~] and fees collected under that subchapter;

1 (3) gifts and grants contributed to the fund; and

2 (4) the available earnings of the fund determined in
3 accordance with Section 403.1068.

4 (c) The available earnings of the fund may be appropriated
5 to:

6 (1) the Office of Rural Community Affairs for the
7 purposes of Subchapter H, Chapter 487; or

8 (2) another agency for the promotion, construction, or
9 operation of federally qualified health centers in rural areas of
10 the state based on medically underserved need.

11 SECTION 2.29. The heading to Section 403.1065, Government
12 Code, is amended to read as follows:

13 Sec. 403.1065. PERMANENT FUND FOR RURAL HEALTH FACILITIES
14 AND HEALTH CENTERS [~~FACILITY CAPITAL IMPROVEMENT~~].

15 SECTION 2.30. Sections 403.1066(a) and (c), Government
16 Code, are amended to read as follows:

17 (a) The permanent fund for community hospitals and urban
18 health centers [~~hospital capital improvement fund~~] is a dedicated
19 account in the general revenue fund. The fund is composed of:

20 (1) money transferred to the fund at the direction of
21 the legislature;

22 (2) payments of interest and principal on loans and
23 fees collected under this section;

24 (3) gifts and grants contributed to the fund; and

25 (4) the available earnings of the fund determined in
26 accordance with Section 403.1068.

27 (c) The available earnings of the fund may be appropriated

1 to:

2 (1) the Texas Department of Health for the purpose of
3 providing grants, loans, or loan guarantees to public or nonprofit
4 community hospitals with 125 beds or fewer located in an urban area
5 of the state; or

6 (2) another agency for the promotion, construction, or
7 operation of federally qualified health centers in urban areas of
8 the state based on medically underserved need.

9 SECTION 2.31. The heading to Section 403.1066, Government
10 Code, is amended to read as follows:

11 Sec. 403.1066. PERMANENT FUND FOR COMMUNITY HOSPITALS AND
12 URBAN HEALTH CENTERS [~~HOSPITAL CAPITAL IMPROVEMENT FUND~~].

13 SECTION 2.32. Section 466.408(b), Government Code, is
14 amended to read as follows:

15 (b) If a claim is not made for prize money on or before the
16 180th day after the date on which the winner was selected, the prize
17 money shall be deposited to the credit of the Texas Department of
18 Health state-owned multicategorical teaching hospital account or
19 the tertiary care facility account as follows:

20 (1) not more than \$25 [~~\$40~~] million in prize money each
21 biennium may be deposited to or appropriated from the Texas
22 Department of Health state-owned multicategorical teaching
23 hospital account, which is an account in the general revenue fund;
24 and

25 (2) all prize money subject to this section in excess
26 of \$25 [~~\$40~~] million each biennium shall be deposited in the
27 tertiary care facility account. Money deposited in the tertiary

1 care facility account may only be appropriated to the department
2 for purposes specified in Chapter 46 or 61, Health and Safety Code.

3 SECTION 2.33. (a) Subchapter B, Chapter 12, Health and
4 Safety Code, is amended by adding Sections 12.0111 and 12.0112 to
5 read as follows:

6 Sec. 12.0111. LICENSING FEES. (a) This section applies in
7 relation to each licensing program administered by the department
8 or administered by a regulatory board or other agency that is under
9 the jurisdiction of the department or administratively attached to
10 the department. In this section and Section 12.0112, "license"
11 includes a permit, certificate, or registration.

12 (b) Notwithstanding other law, the department shall charge
13 a fee for issuing or renewing a license that is in an amount
14 designed to allow the department to recover from its license
15 holders all of the department's direct and indirect costs in
16 administering and enforcing the applicable licensing program.

17 (c) Notwithstanding other law, each regulatory board or
18 other agency that is under the jurisdiction of the department or
19 administratively attached to the department and that issues
20 licenses shall charge a fee for issuing or renewing a license that
21 is in an amount designed to allow the department and the regulatory
22 board or agency to recover from the license holders all of the
23 direct and indirect costs to the department and to the regulatory
24 board or agency in administering and enforcing the applicable
25 licensing program.

26 Sec. 12.0112. TERM OF LICENSE. Notwithstanding other law,
27 the term of each license issued by the department, or by a

1 regulatory board or other agency that is under the jurisdiction of
2 the department or administratively attached to the department, is
3 three years.

4 (b) Section 12.0111, Health and Safety Code, as added by
5 this section, applies only to a license, permit, certificate, or
6 registration issued or renewed by the Texas Department of Health,
7 or by a regulatory board or other agency that is under the
8 jurisdiction of the department or administratively attached to the
9 department, on or after January 1, 2004.

10 (c) Section 12.0112, Health and Safety Code, as added by
11 this section, applies only to a license, permit, certificate, or
12 registration that is issued or renewed on or after January 1, 2005.

13 SECTION 2.34. Sections 62.055(a), (d), and (e), Health and
14 Safety Code, are amended to read as follows:

15 (a) It is the intent of the legislature that the commission
16 maximize the use of private resources in administering the child
17 health plan created under this chapter. In administering the child
18 health plan, the commission may contract with[+]

19 [~~(1)~~] a third party administrator to provide
20 enrollment and related services under the state child health plan[+]
21 ~~or~~

22 [~~(2) another entity, including the Texas Healthy Kids~~
23 ~~Corporation under Subchapter F, Chapter 109, to obtain health~~
24 ~~benefit plan coverage for children who are eligible for coverage~~
25 ~~under the state child health plan].~~

26 (d) A third party administrator [~~or other entity~~] may
27 perform tasks under the contract that would otherwise be performed

1 by the Texas Department of Health or Texas Department of Human
2 Services under this chapter.

3 (e) The commission shall:

4 (1) retain all policymaking authority over the state
5 child health plan;

6 (2) procure all contracts with a third party
7 administrator [~~or other entity~~] through a competitive procurement
8 process in compliance with all applicable federal and state laws or
9 regulations; and

10 (3) ensure that all contracts with child health plan
11 providers under Section 62.155 are procured through a competitive
12 procurement process in compliance with all applicable federal and
13 state laws or regulations.

14 SECTION 2.35. (a) Subchapter B, Chapter 62, Health and
15 Safety Code, is amended by adding Section 62.0582 to read as
16 follows:

17 Sec. 62.0582. THIRD-PARTY BILLING VENDORS. (a) A
18 third-party billing vendor may not submit a claim with the
19 commission for payment on behalf of a health plan provider under the
20 program unless the vendor has entered into a contract with the
21 commission authorizing that activity.

22 (b) To the extent practical, the contract shall contain
23 provisions comparable to the provisions contained in contracts
24 between the commission and health plan providers, with an emphasis
25 on provisions designed to prevent fraud or abuse under the program.
26 At a minimum, the contract must require the third-party billing
27 vendor to:

1 (1) provide documentation of the vendor's authority to
2 bill on behalf of each provider for whom the vendor submits claims;

3 (2) submit a claim in a manner that permits the
4 commission to identify and verify the vendor, any computer or
5 telephone line used in submitting the claim, any relevant user
6 password used in submitting the claim, and any provider number
7 referenced in the claim; and

8 (3) subject to any confidentiality requirements
9 imposed by federal law, provide the commission, the office of the
10 attorney general, or authorized representatives with:

11 (A) access to any records maintained by the
12 vendor, including original records and records maintained by the
13 vendor on behalf of a provider, relevant to an audit or
14 investigation of the vendor's services or another function of the
15 commission or office of attorney general relating to the vendor;
16 and

17 (B) if requested, copies of any records described
18 by Paragraph (A) at no charge to the commission, the office of the
19 attorney general, or authorized representatives.

20 (c) On receipt of a claim submitted by a third-party billing
21 vendor, the commission shall send a remittance notice directly to
22 the provider referenced in the claim. The notice must:

23 (1) include detailed information regarding the claim
24 submitted on behalf of the provider; and

25 (2) require the provider to review the claim for
26 accuracy and notify the commission promptly regarding any errors.

27 (d) The commission shall take all action necessary,

1 including any modifications of the commission's claims processing
2 system, to enable the commission to identify and verify a
3 third-party billing vendor submitting a claim for payment under the
4 program, including identification and verification of any computer
5 or telephone line used in submitting the claim, any relevant user
6 password used in submitting the claim, and any provider number
7 referenced in the claim.

8 (b) Section 62.0582, Health and Safety Code, as added by
9 this section, takes effect January 1, 2004.

10 SECTION 2.36. Sections 62.101(b) and (c), Health and Safety
11 Code, are amended to read as follows:

12 (b) The commission shall establish income eligibility
13 levels consistent with Title XXI, Social Security Act (42 U.S.C.
14 Section 1397aa et seq.), as amended, and any other applicable law or
15 regulations, and subject to the availability of appropriated money,
16 so that a child who is younger than 19 years of age and whose net
17 family income is at or below 150 [~~200~~] percent of the federal
18 poverty level is eligible for health benefits coverage under the
19 program.

20 (c) The commissioner shall evaluate enrollment levels and
21 program impact every six months during the first 12 months of
22 implementation and at least annually thereafter and shall submit a
23 finding of fact to the Legislative Budget Board and the Governor's
24 Office of Budget and Planning as to the adequacy of funding and the
25 ability of the program to sustain enrollment at the eligibility
26 level established by Subsection (b). In the event that
27 appropriated money is insufficient to sustain enrollment at the

1 authorized eligibility level or enrollment exceeds the number of
2 children authorized to be enrolled in the child health plan under
3 the General Appropriations Act, the commissioner shall:

4 (1) suspend enrollment in the child health plan;

5 (2) establish a waiting list for applicants for
6 coverage; and

7 (3) establish a process for periodic or continued
8 enrollment of applicants in the child health plan program as the
9 availability of money allows.

10 SECTION 2.37. Section 62.1015(b), Health and Safety Code,
11 is amended to read as follows:

12 (b) A child of an employee of a charter school, school
13 district, other educational district whose employees are members of
14 the Teacher Retirement System of Texas, or regional education
15 service center may be enrolled in health benefits coverage under
16 the child health plan. A child enrolled in the child health plan
17 under this section:

18 (1) participates in the same manner as any other child
19 enrolled in the child health plan; and

20 (2) is subject to the same requirements and
21 restrictions relating to income eligibility, continuous coverage,
22 and enrollment, including applicable waiting periods, as any other
23 child enrolled in the child health plan.

24 SECTION 2.38. Section 62.102, Health and Safety Code, is
25 amended to read as follows:

26 Sec. 62.102. CONTINUOUS COVERAGE. The commission shall
27 provide that an individual who is determined to be eligible for

1 coverage under the child health plan remains eligible for those
2 benefits until the earlier of:

3 (1) the end of a period, not to exceed 180 days [~~12~~
4 ~~months~~], following the date of the eligibility determination; or

5 (2) the individual's 19th birthday.

6 SECTION 2.39. Section 62.105, Health and Safety Code, is
7 amended to read as follows:

8 Sec. 62.105. COVERAGE FOR QUALIFIED ALIENS. The commission
9 may [~~shall~~] provide coverage under the state Medicaid program and
10 under the program established under this chapter to a child who is a
11 qualified alien, as that term is defined by 8 U.S.C. Section
12 1641(b), if the federal government authorizes the state to provide
13 that coverage. The commission shall comply with any prerequisite
14 imposed under the federal law to providing that coverage.

15 SECTION 2.40. Section 62.151, Health and Safety Code, is
16 amended by amending Subsection (b) and adding Subsections (e) and
17 (f) to read as follows:

18 (b) In developing the covered benefits, the commission
19 shall consider the health care needs of healthy children and
20 children with special health care needs. At the time the child
21 health plan program is first implemented, the child health plan
22 must provide a benefits package that is actuarially equivalent, as
23 determined in accordance with 42 U.S.C. Section 1397cc, to the
24 basic plan for active state employees offered through health
25 maintenance organizations under Chapter 1551, Insurance Code [~~the~~
26 ~~Texas Employees Uniform Group Insurance Benefits Act (Article~~
27 ~~3.50-2, Vernon's Texas Insurance Code)~~], as determined by the

1 commission. [~~The child health plan must provide at least the~~
2 ~~covered benefits described by the recommended benefits package~~
3 ~~described for a state-designed child health plan by the Texas House~~
4 ~~of Representatives Committee on Public Health "CHIP" Interim Report~~
5 ~~to the Seventy-Sixth Texas Legislature dated December, 1998, and~~
6 ~~the Senate Interim Committee on Children's Health Insurance Report~~
7 ~~to the Seventy-Sixth Texas Legislature dated December 1, 1998.]~~

8 (e) In developing the covered benefits, the commission
9 shall seek input from the Public Assistance Health Benefit Review
10 and Design Committee established under Section 531.067, Government
11 Code.

12 (f) The commission, if it determines the policy to be
13 cost-effective, may ensure that an enrolled child does not, unless
14 authorized by the commission in consultation with the child's
15 attending physician or advanced practice nurse, receive under the
16 child health plan:

17 (1) more than four different outpatient brand-name
18 prescription drugs during a month; or

19 (2) more than a 34-day supply of a brand-name
20 prescription drug at any one time.

21 SECTION 2.41. Section 62.153, Health and Safety Code, is
22 amended by amending Subsection (b) and adding Subsection (d) to
23 read as follows:

24 (b) Subject to Subsection (d), cost-sharing [~~Cost-sharing~~]
25 provisions adopted under this section shall ensure that families
26 with higher levels of income are required to pay progressively
27 higher percentages of the cost of the plan.

1 (d) Cost-sharing provisions adopted under this section may
2 be determined based on the maximum level authorized under federal
3 law and applied to income levels in a manner that minimizes
4 administrative costs.

5 SECTION 2.42. (a) The heading to Section 62.154, Health and
6 Safety Code, is amended to read as follows:

7 Sec. 62.154. WAITING PERIOD; CROWD OUT.

8 (b) Sections 62.154(a), (b), and (d), Health and Safety
9 Code, are amended to read as follows:

10 (a) To the extent permitted under Title XXI of the Social
11 Security Act (42 U.S.C. Section 1397aa et seq.), as amended, and any
12 other applicable law or regulations, the child health plan must
13 include a waiting period. The child health plan ~~[and]~~ may include
14 copayments and other provisions intended to discourage:

15 (1) employers and other persons from electing to
16 discontinue offering coverage for children under employee or other
17 group health benefit plans; and

18 (2) individuals with access to adequate health benefit
19 plan coverage, other than coverage under the child health plan,
20 from electing not to obtain or to discontinue that coverage for a
21 child.

22 (b) A child is not subject to a waiting period adopted under
23 Subsection (a) if:

24 (1) the family lost coverage for the child as a result
25 of:

26 (A) termination of employment because of a layoff
27 or business closing;

1 (B) termination of continuation coverage under
2 the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L.
3 No. 99-272);

4 (C) change in marital status of a parent of the
5 child;

6 (D) termination of the child's Medicaid
7 eligibility because:

8 (i) the child's family's earnings or
9 resources increased; or

10 (ii) the child reached an age at which
11 Medicaid coverage is not available; or

12 (E) a similar circumstance resulting in the
13 involuntary loss of coverage;

14 (2) the family terminated health benefits plan
15 coverage for the child because the cost to the child's family for
16 the coverage exceeded 10 percent of the family's net income; ~~[or]~~

17 (3) the child has access to group-based health
18 benefits plan coverage and is required to participate in the health
19 insurance premium payment reimbursement program administered by
20 the commission; or

21 (4) the commission has determined that other grounds
22 exist for a good cause exception.

23 (d) The waiting period required by Subsection (a) must ~~[+~~
24 ~~[-1-]~~ extend for a period of 90 days after the ~~[last]~~
25 date on which the applicant applies to be enrolled under the child
26 health plan ~~[was covered under a health benefits plan, and~~

27 ~~[-2-] apply to a child who was covered by a health~~

1 ~~benefits plan at any time during the 90 days before the date of~~
2 ~~application for coverage under the child health plan, other than a~~
3 ~~child who was covered under a health benefits plan provided under~~
4 ~~Chapter 109].~~

5 SECTION 2.43. Sections 62.155(c) and (d), Health and Safety
6 Code, are amended to read as follows:

7 (c) In selecting a health plan provider, the commission:

8 (1) may give preference to a person who provides
9 similar coverage under the Medicaid program ~~[or through the Texas~~
10 ~~Healthy Kids Corporation]~~; and

11 (2) shall provide for a choice of not more than ~~[at~~
12 ~~least]~~ two health plan providers in each service ~~[metropolitan]~~
13 area.

14 (d) The commissioner may authorize an exception to
15 Subsection (c)(2) if it is cost-effective to do so and there are
16 more than two ~~[is only one]~~ acceptable applicants ~~[applicant]~~ to
17 become ~~[a]~~ health plan providers ~~[provider]~~ in the service
18 ~~[metropolitan]~~ area.

19 SECTION 2.44. Subchapter D, Chapter 62, Health and Safety
20 Code, is amended by adding Section 62.158 to read as follows:

21 Sec. 62.158. STATE TAXES. The commission shall ensure that
22 any experience rebate or profit-sharing for health plan providers
23 under the child health plan is calculated by treating premium,
24 maintenance, and other taxes under the Insurance Code and any other
25 taxes payable to this state as allowable expenses for purposes of
26 determining the amount of the experience rebate or profit-sharing.

27 SECTION 2.45. (a) Section 242.063(d), Health and Safety

1 Code, is amended to read as follows:

2 (d) A [~~Notwithstanding Chapter 15, Civil Practice and~~
3 ~~Remedies Code, or Section 65.023, Civil Practice and Remedies Code,~~
4 a] suit for a temporary restraining order or other injunctive
5 relief must [~~may~~] be brought in [~~Travis County or in~~] the county in
6 which the alleged violation occurs.

7 (b) Section 242.063(e), Health and Safety Code, is
8 repealed.

9 (c) The changes in law made by this section to Section
10 242.063(d), Health and Safety Code, apply only to a suit filed on or
11 after the effective date of this section. A suit filed before the
12 effective date of this section is covered by the law in effect when
13 the suit was filed, and that law is continued in effect for that
14 purpose.

15 SECTION 2.46. Section 242.065(b), Health and Safety Code,
16 is amended to read as follows:

17 (b) In determining the amount of a penalty to be awarded
18 under this section, the trier of fact shall consider:

19 (1) the seriousness of the violation[~~, including the~~
20 ~~nature, circumstances, extent, and gravity of the violation and the~~
21 ~~hazard or potential hazard created by the violation to the health or~~
22 ~~safety of a resident)];~~

23 (2) the history of violations committed by the person
24 or the person's affiliate, employee, or controlling person;

25 (3) the amount necessary to deter future violations;

26 (4) the efforts made to correct the violation;

27 (5) any misrepresentation made to the department or to

1 another person regarding:

2 (A) the quality of services rendered or to be
3 rendered to residents;

4 (B) the compliance history of the institution or
5 any institutions owned or controlled by an owner or controlling
6 person of the institution; or

7 (C) the identity of an owner or controlling
8 person of the institution;

9 (6) the culpability of the individual who committed
10 the violation; and

11 (7) any other matter that should, as a matter of
12 justice or equity, be considered.

13 SECTION 2.47. (a) Section 242.070, Health and Safety Code,
14 is amended to read as follows:

15 Sec. 242.070. APPLICATION OF OTHER LAW. The department may
16 not assess more than one monetary penalty under this chapter and
17 Chapter 32, Human Resources Code, for a violation arising out of the
18 same act or failure to act, except as provided by Section
19 242.0665(c). The [~~This section does not prohibit the~~] department
20 may assess the greater of [~~from assessing~~] a monetary penalty under
21 this chapter or [~~and~~] a monetary penalty under Chapter 32, Human
22 Resources Code, for the same act or failure to act.

23 (b) The change in law made by this section to Section
24 242.070, Health and Safety Code, applies only to a penalty assessed
25 on or after the effective date of this section.

26 SECTION 2.48. Subchapter K, Chapter 242, Health and Safety
27 Code, is amended by adding Section 242.406 to read as follows:

1 Sec. 242.406. GRANT PROGRAM FOR NURSING FACILITIES
2 PROVIDING QUALITY ENVIRONMENTS. (a) The department shall
3 establish a competitive grant program to pay part of the costs of a
4 project proposed by a nursing facility that is designed to improve
5 the quality of life for residents of the facility by providing:

6 (1) homelike environments for residents, including
7 providing opportunities for residents to engage in meaningful
8 activities such as gardening or other outdoor activities;

9 (2) direct care staff members who tailor care to the
10 individual needs of a resident and allow the resident and the
11 resident's family members to participate in the decision-making
12 process regarding that care;

13 (3) opportunities for residents to interact with
14 companion animals, children, family members, and other visitors
15 from the community; or

16 (4) other innovative programs designed to improve the
17 quality of residents' care.

18 (b) A project proposed by a nursing facility under
19 Subsection (a) must be designed to serve as a model of best
20 practices for the nursing facility industry.

21 (c) The department shall monitor the expenditure of grant
22 money to ensure that the money is being used for the intended
23 purpose.

24 (d) The department by rule shall establish guidelines for
25 the grant program, including guidelines that specify:

26 (1) the procedures for submitting a grant proposal;

27 (2) the criteria the department will follow in

1 evaluating the proposals; and

2 (3) the reports that a grant recipient must file to
3 allow the department and the industry to evaluate the feasibility
4 and success of the project.

5 (e) The department shall fund the grant program using
6 available resources attributable to the savings realized from
7 implementing Section 32.050(e), Human Resources Code.

8 (f) The department shall award each grant under a contract.
9 A contract may further detail:

10 (1) reports that the grant recipient must file; and

11 (2) monitoring of the project that the grant recipient
12 must allow.

13 (g) The department shall post a summary of best practices
14 under the grant program on its Internet website to serve as a model
15 of best practices for the industry. The department shall report to
16 the legislature regarding those best practices.

17 SECTION 2.49. Section 242.601(a), Health and Safety Code,
18 is amended to read as follows:

19 (a) An institution must establish medication administration
20 procedures ~~[to ensure that:~~

21 ~~[(1) medications to be administered are checked~~
22 ~~against the order of a physician, advanced practice nurse, or~~
23 ~~physician assistant pursuant to protocols jointly developed with a~~
24 ~~physician;~~

25 ~~[(2) the resident is identified before the~~
26 ~~administration of a medication;~~

27 ~~[(3) each resident's clinical record includes an~~

1 ~~individual medication record in which the dose of medication~~
2 ~~administered is properly recorded by the person who administered~~
3 ~~the medication;~~

4 ~~[(4) medications and biologicals are prepared and~~
5 ~~administered to a resident by the same individual, except under~~
6 ~~unit-of-use package distribution systems; and~~

7 ~~[(5) a medication prescribed for one resident is not~~
8 ~~administered to any other person].~~

9 SECTION 2.50. Section 242.603(a), Health and Safety Code,
10 is amended to read as follows:

11 (a) An institution shall store medications under
12 appropriate conditions of sanitation, temperature, light,
13 moisture, ventilation, segregation, and security. ~~[Poisons,~~
14 ~~medications used externally, and medications taken internally~~
15 ~~shall be stored on separate shelves or in separate cabinets.~~
16 ~~Medication stored in a refrigerator containing other items shall be~~
17 ~~kept in a separate compartment with appropriate security. The~~
18 ~~institution shall store a medication in a locked area that must~~
19 ~~remain locked unless an individual authorized to distribute the~~
20 ~~medication is present.]~~

21 SECTION 2.51. (a) Section 252.202(a), Health and Safety
22 Code, is amended to read as follows:

23 (a) A quality assurance fee is imposed on each facility for
24 which a license fee must be paid under Section 252.034, ~~[and]~~
25 each facility owned by a community mental health and mental
26 retardation center, as described by Subchapter A, Chapter 534, and
27 on each facility owned by the Texas Department of Mental Health and

1 Mental Retardation. The fee:

2 (1) is an amount established under Subsection (b)
3 multiplied by the number of patient days as determined in
4 accordance with Section 252.203;

5 (2) is payable monthly; and

6 (3) is in addition to other fees imposed under this
7 chapter.

8 (b) Not later than January 1, 2004, each facility owned by
9 the Texas Department of Mental Health and Mental Retardation shall
10 pay the quality assurance fee imposed by Section 252.202, Health
11 and Safety Code, as amended by this section, for patient days
12 occurring between September 1, 2002, and July 31, 2003.

13 SECTION 2.52. Section 252.203, Health and Safety Code, is
14 amended to read as follows:

15 Sec. 252.203. PATIENT DAYS. For each calendar day, a
16 facility shall determine the number of patient days by adding the
17 following:

18 (1) the number of patients occupying a facility bed
19 immediately before midnight of that day; and

20 ~~(2) [the number of beds that are on hold on that day~~
21 ~~and that have been placed on hold for a period not to exceed three~~
22 ~~consecutive calendar days during which a patient is in a hospital,~~
23 ~~and~~

24 ~~[(3)]~~ the number of beds that are on hold on that day
25 and that have been placed on hold for a period not to exceed three
26 consecutive calendar days during which a patient is on therapeutic
27 ~~[home]~~ leave.

1 SECTION 2.53. Section 252.204(b), Health and Safety Code,
2 is amended to read as follows:

3 (b) Each facility shall:

4 (1) not later than the 20th [~~10th~~] day after the last
5 day of a month file a report with the Health and Human Services
6 Commission or the department, as appropriate, stating the total
7 patient days for the month; and

8 (2) not later than the 30th day after the last day of
9 the month pay the quality assurance fee.

10 SECTION 2.54. Sections 252.207(a) and (c), Health and
11 Safety Code, are amended to read as follows:

12 (a) Subject to legislative appropriation and state and
13 federal law, the [~~The~~] Health and Human Services Commission may
14 [~~shall~~] use money in the quality assurance fund, together with any
15 federal money available to match that money[~~, to~~]:

16 (1) to offset [~~allowable~~] expenses incurred to
17 administer the quality assurance fee under this chapter [~~under the~~
18 ~~Medicaid program~~]; [~~or~~]

19 (2) to increase reimbursement rates paid under the
20 Medicaid program to facilities or waiver programs for persons with
21 mental retardation operated in accordance with 42 U.S.C. Section
22 1396n(c) and its subsequent amendments; or

23 (3) for any other health and human services purpose
24 approved by the governor and Legislative Budget Board[~~, subject to~~
25 ~~Section 252.206(d)~~].

26 (c) If money in the quality assurance fund is used to
27 increase a reimbursement rate in the Medicaid program, the [~~The~~]

1 Health and Human Services Commission shall ensure that the
2 reimbursement methodology used to set that rate describes how the
3 money in the fund will be used to increase the rate and [~~formula~~
4 ~~devised under Subsection (b)~~] provides incentives to increase
5 direct care staffing and direct care wages and benefits.

6 SECTION 2.55. (a) Section 461.018(b), Health and Safety
7 Code, is amended to read as follows:

8 (b) The commission's program under Subsection (a) must
9 include:

10 (1) [~~establishing and maintaining a toll-free "800"~~
11 ~~telephone number to provide crisis counseling and referral services~~
12 ~~to families experiencing difficulty as a result of problem or~~
13 ~~compulsive gambling,~~

14 [~~(2)~~] promoting public awareness regarding the
15 recognition and prevention of problem or compulsive gambling;

16 (2) [~~(3)~~] facilitating, through in-service training
17 and other means, the availability of effective assistance programs
18 for problem or compulsive gamblers; and

19 (3) [~~(4)~~] conducting studies to identify adults and
20 juveniles in this state who are, or who are at risk of becoming,
21 problem or compulsive gamblers.

22 (b) Section 466.251(b), Government Code, and Section
23 2001.417(b), Occupations Code, are repealed.

24 SECTION 2.56. Subchapter B, Chapter 533, Health and Safety
25 Code, is amended by adding Section 533.0354 to read as follows:

26 Sec. 533.0354. DISEASE MANAGEMENT PRACTICES AND JAIL
27 DIVERSION MEASURES OF LOCAL MENTAL HEALTH AUTHORITIES. (a) A local

1 mental health authority shall provide assessment services, crisis
2 services, and intensive and comprehensive services using disease
3 management practices for adults with bipolar disorder,
4 schizophrenia, or clinically severe depression and for children
5 with serious emotional illnesses. The local mental health
6 authority shall engage an individual with treatment services that
7 are:

8 (1) ongoing and matched to the needs of the individual
9 in type, duration, and intensity;

10 (2) focused on a process of recovery designed to allow
11 the individual to progress through levels of service;

12 (3) guided by evidence-based protocols and a
13 strength-based paradigm of service; and

14 (4) monitored by a system that holds the local
15 authority accountable for specific outcomes, while allowing
16 flexibility to maximize local resources.

17 (b) The department shall require each local mental health
18 authority to incorporate jail diversion strategies into the
19 authority's disease management practices for managing adults with
20 schizophrenia and bipolar disorder to reduce the involvement of
21 those client populations with the criminal justice system.

22 (c) The department shall enter into performance contracts
23 between the department and each local mental health authority for
24 the fiscal years ending August 31, 2004, and August 31, 2005, that
25 specify measurable outcomes related to their success in using
26 disease management practices to meet the needs of the target
27 populations.

1 (d) The department shall study the implementation of
2 disease management practices, including the jail diversion
3 measures, and shall submit to the governor, the lieutenant
4 governor, and the speaker of the house of representatives a report
5 on the progress in implementing disease management practices and
6 jail diversion measures by local mental health authorities. The
7 report must be delivered not later than December 31, 2004, and must
8 include specific information on:

9 (1) the implementation of jail diversion measures
10 undertaken; and

11 (2) the effect of disparities in per capita funding
12 levels among local mental health authorities on the implementation
13 and effectiveness of disease management practices and jail
14 diversion measures.

15 (e) The department may use the fiscal year ending August 31,
16 2004, as a transition period for implementing the requirements of
17 Subsections (a)-(c).

18 SECTION 2.57. (a) Subchapter C, Chapter 533, Health and
19 Safety Code, is amended by adding Sections 533.061 and 533.0611 to
20 read as follows:

21 Sec. 533.061. REQUIRED CONTRACT PROVISIONS. (a) The
22 department shall include in a contract with an ICF-MR program
23 provider a provision stating that the contract terminates if the
24 department imposes a vendor hold on payments made to the facility
25 under the medical assistance program under Chapter 32, Human
26 Resources Code, three times during an 18-month period.

27 (b) The department shall ensure that each provision of a

1 contract with an ICF-MR program provider is consistent with
2 department and Texas Department of Human Services rules that govern
3 the program.

4 Sec. 533.0611. SANCTIONS. If the Texas Department of Human
5 Services recommends that a vendor hold be imposed on payments made
6 to an ICF-MR program provider or that the contract with the ICF-MR
7 program provider be terminated, the Texas Department of Mental
8 Health and Mental Retardation shall immediately impose the vendor
9 hold or terminate the contract, as appropriate, without conducting
10 a further investigation or providing the program provider an
11 opportunity to take corrective action.

12 (b) A rule adopted by the Texas Board of Mental Health and
13 Mental Retardation before September 1, 2003, relating to the
14 imposition of a vendor hold on payments made to an ICF-MR program
15 provider or the cancellation of a contract with an ICF-MR program
16 provider after the imposition of vendor holds, is repealed on
17 September 1, 2003.

18 (c) The change in law made by Section 533.061, Health and
19 Safety Code, as added by this section, applies only to a contract
20 entered into with an ICF-MR program provider on or after the
21 effective date of this section. A contract entered into with an
22 ICF-MR program provider before the effective date of this section
23 is governed by the law in effect on the date the contract was
24 entered into, and the former law is continued in effect for that
25 purpose.

26 SECTION 2.58. Section 533.084, Health and Safety Code, is
27 amended by adding Subsections (b-1) and (b-2) to read as follows:

1 (b-1) Notwithstanding Subsection (b) or any other law, the
2 proceeds from the disposal of any surplus real property by the
3 department that occurs before September 1, 2005:

4 (1) are not required to be deposited to the credit of
5 the department in the Texas capital trust fund established under
6 Chapter 2201, Government Code; and

7 (2) may be appropriated for any general governmental
8 purpose.

9 (b-2) Subsection (b-1) and this subsection expire September
10 1, 2005.

11 SECTION 2.59. Subchapter D, Chapter 533, Health and Safety
12 Code, is amended by adding Section 533.0844 to read as follows:

13 Sec. 533.0844. MENTAL HEALTH COMMUNITY SERVICES TRUST FUND.

14 (a) In this section:

15 (1) "Trust fund" means the mental health community
16 services trust fund.

17 (2) "Trust fund account" means the mental health
18 community services trust fund account.

19 (b) The trust fund and the trust fund account are trust
20 funds held outside the state treasury by the comptroller. The trust
21 fund is composed of money deposited as provided by Subsection (c).
22 The trust fund account is composed of money deposited as provided by
23 Subsection (d). The comptroller is trustee of the assets of the
24 trust fund and trust fund account.

25 (c) The comptroller shall deposit to the credit of the trust
26 fund any money donated to the state for deposit in the trust fund,
27 including life insurance proceeds designated for deposit to the

1 trust fund.

2 (d) The comptroller shall deposit to the credit of the trust
3 fund account:

4 (1) interest and other investment proceeds earned on
5 the trust fund; and

6 (2) any money donated to the state for inclusion in the
7 trust fund account, including life insurance proceeds designated
8 for deposit to the trust fund account.

9 (e) The comptroller shall invest the trust fund to provide
10 for income and preservation of the trust fund's principal.
11 Investment earnings on the principal of the trust fund shall be
12 deposited to the trust fund account. Before depositing money to the
13 trust fund account the comptroller may deduct from the money the
14 comptroller's expenses incurred in managing the trust fund and the
15 trust fund account. The amount of deposits to the trust fund account
16 under this subsection shall be determined by the comptroller in a
17 manner intended to provide a stable and predictable stream of
18 annual deposits and to maintain over time the purchasing power of
19 trust fund investments. If the purchasing power of trust fund
20 investments for any 10-year period is not preserved, the
21 comptroller may not increase the amount of deposits to the trust
22 fund account until the purchasing power of the trust fund
23 investments is restored.

24 (f) Money in the trust fund account may be used only for the
25 provision of mental health services by or under contract with the
26 department. The comptroller shall make available to the department
27 without appropriation money in the account for expenditures

1 consistent with this subsection.

2 SECTION 2.60. Subchapter D, Chapter 533, Health and Safety
3 Code, is amended by adding Section 533.0846 to read as follows:

4 Sec. 533.0846. MENTAL RETARDATION COMMUNITY SERVICES TRUST
5 FUND. (a) In this section:

6 (1) "Trust fund" means the mental retardation
7 community services trust fund.

8 (2) "Trust fund account" means the mental retardation
9 community services trust fund account.

10 (b) The trust fund and the trust fund account are trust
11 fund held outside the state treasury by the comptroller. The trust
12 fund is composed of money deposited as provided by Subsection (c).
13 The trust fund account is composed of money deposited as provided by
14 Subsection (d). The comptroller is trustee of the assets of the
15 trust fund and trust fund account.

16 (c) The comptroller shall deposit to the credit of the trust
17 fund any money donated to the state for deposit in the trust fund,
18 including life insurance proceeds designated for deposit to the
19 trust fund.

20 (d) The comptroller shall deposit to the credit of the trust
21 fund account:

22 (1) interest and other investment proceeds earned on
23 the trust fund; and

24 (2) any money donated to the state for inclusion in the
25 trust fund account, including life insurance proceeds designated
26 for deposit to the trust fund account.

27 (e) The comptroller shall invest the trust fund to provide

1 for income and preservation of the trust fund's principal.
2 Investment earnings on the principal of the trust fund shall be
3 deposited to the trust fund account. Before depositing money to the
4 trust fund account the comptroller may deduct from the money the
5 comptroller's expenses incurred in managing the trust fund and the
6 trust fund account. The amount of deposits to the trust fund
7 account under this subsection shall be determined by the
8 comptroller in a manner intended to provide a stable and
9 predictable stream of annual deposits and to maintain over time the
10 purchasing power of trust fund investments. If the purchasing
11 power of trust fund investments for any 10-year period is not
12 preserved, the comptroller may not increase the amount of deposits
13 to the trust fund account until the purchasing power of the trust
14 fund investments is restored.

15 (f) Money in the trust fund account may be used only for the
16 provision of mental retardation services by or under contract with
17 the department. The comptroller shall make available to the
18 department without appropriation money in the account for
19 expenditures consistent with this subsection.

20 SECTION 2.61. Chapter 22, Human Resources Code, is amended
21 by adding Section 22.040 to read as follows:

22 Sec. 22.040. THIRD-PARTY INFORMATION. Notwithstanding any
23 other provision of this code, the department may use information
24 obtained from a third party to verify the assets and resources of a
25 person for purposes of determining the person's eligibility and
26 need for medical assistance, financial assistance, or nutritional
27 assistance. Third-party information includes information obtained

1 from:

2 (1) a consumer reporting agency, as defined by Section
3 20.01, Business & Commerce Code;

4 (2) an appraisal district; or

5 (3) the Texas Department of Transportation's vehicle
6 registration record database.

7 SECTION 2.62. (a) Section 31.0031, Human Resources Code,
8 is amended by amending Subsections (d) and (g) and adding
9 Subsection (h) to read as follows:

10 (d) The responsibility agreement shall require that:

11 (1) the parent of a dependent child cooperate with the
12 department and the Title IV-D agency if necessary to establish the
13 paternity of the dependent child and to establish or enforce child
14 support;

15 (2) if adequate and accessible providers of the
16 services are available in the geographic area and subject to the
17 availability of funds, each dependent child, as appropriate,
18 complete early and periodic screening, diagnosis, and treatment
19 checkups on schedule and receive the immunization series prescribed
20 by Section 161.004, Health and Safety Code, unless the child is
21 exempt under that section;

22 (3) each adult recipient, or teen parent recipient who
23 has completed the requirements regarding school attendance in
24 Subdivision (6), not voluntarily terminate paid employment of at
25 least 30 hours each week without good cause in accordance with rules
26 adopted by the department;

27 (4) each adult recipient for whom a needs assessment

1 is conducted participate in an activity to enable that person to
2 become self-sufficient by:

3 (A) continuing the person's education or
4 becoming literate;

5 (B) entering a job placement or employment skills
6 training program;

7 (C) serving as a volunteer in the person's
8 community; or

9 (D) serving in a community work program or other
10 work program approved by the department;

11 (5) each caretaker relative or parent receiving
12 assistance not use, sell, or possess marihuana or a controlled
13 substance in violation of Chapter 481, Health and Safety Code, or
14 abuse alcohol;

15 (6) each dependent child younger than 18 years of age
16 or teen parent younger than 19 years of age attend school regularly,
17 unless the child has a high school diploma or high school
18 equivalency certificate or is specifically exempted from school
19 attendance under Section 25.086, Education Code;

20 (7) each recipient comply with department rules
21 regarding proof of school attendance; ~~and~~

22 (8) each recipient attend appropriate parenting
23 skills training classes, as determined by the needs assessment; and

24 (9) each recipient claim the federal earned income tax
25 credit on the recipient's federal income tax return for each tax
26 year the recipient qualifies for that credit.

27 (g) In this section:

1 (1) "Caretaker [~~, "caretaker~~] relative" means a person
2 who is listed as a relative eligible to receive assistance under 42
3 U.S.C. Section 602(a).

4 (2) "Payee" means a person who resides in a household
5 with a dependent child and who is within the degree of relationship
6 with the child that is required of a caretaker, but whose needs are
7 not included in determining the amount of financial assistance
8 provided for the person's household.

9 (h) The department shall require each payee to sign a bill
10 of responsibilities that defines the responsibilities of the state
11 and of the payee. The responsibility agreement must require that a
12 payee comply with the requirements of Subsections (d)(1), (2), (5),
13 (6), and (7).

14 (b) Not later than January 1, 2004, the Texas Department of
15 Human Services shall require each payee of financial assistance
16 under Chapter 31, Human Resources Code, who received that
17 assistance on behalf of a dependent child before September 1, 2003,
18 and each recipient of financial assistance under Chapter 31, Human
19 Resources Code, who received that assistance before September 1,
20 2003, to enter into a responsibility agreement that complies with
21 the requirements of Section 31.0031, Human Resources Code, as
22 amended by this section, to continue receiving that assistance.
23 The department may not enforce the terms of the new agreement until
24 the payee or recipient has an opportunity to enter into the
25 agreement.

26 SECTION 2.63. (a) Sections 31.0032, 31.0033, and 31.0034,
27 Human Resources Code, are amended to read as follows:

1 Sec. 31.0032. PAYMENT OF ASSISTANCE AFTER PERFORMANCE
2 ~~[PENALTIES AND SANCTIONS]~~. (a) Except as provided by Section
3 31.0033 and notwithstanding any other law, a person for whom the
4 department has made an initial determination of eligibility for
5 financial assistance may not begin receiving any amount of that
6 assistance until the person cooperates with the requirements of the
7 responsibility agreement under Section 31.0031 for a one-month
8 period. The person may receive a financial assistance payment each
9 month only if the person cooperated with those requirements during
10 the previous month ~~[231.115, Family Code, as added by Chapter 911,~~
11 ~~Acts of the 75th Legislature, Regular Session, 1997, if after an~~
12 ~~investigation the department or the Title IV-D agency determines~~
13 ~~that a person is not complying with a requirement of the~~
14 ~~responsibility agreement required under Section 31.0031, the~~
15 ~~department immediately shall apply appropriate sanctions or~~
16 ~~penalties regarding the assistance provided to or for that person~~
17 ~~under this chapter].~~

18 (b) The department shall immediately notify the caretaker
19 relative, second parent, or payee receiving the financial
20 assistance if the department will not make the financial assistance
21 payment for a one-month period because of a person's failure to
22 cooperate with the requirements of the responsibility agreement
23 during that month ~~[whether sanctions will be applied under this~~
24 ~~section].~~

25 (c) This section does not prohibit the Texas Workforce
26 Commission, the Health and Human Services Commission, or any health
27 and human services agency, as defined by Section 531.001,

1 Government Code, [department] from providing medical assistance,
2 child care, or any other social or support services for an
3 individual who is eligible for financial assistance but to whom
4 that assistance is not paid because of the individual's failure to
5 cooperate [~~subject to sanctions or penalties under this chapter~~].

6 (d) The department by rule shall establish procedures to
7 determine whether a person has cooperated with the requirements of
8 the responsibility agreement during each one-month period.

9 Sec. 31.0033. GOOD CAUSE [~~NONCOMPLIANCE~~] HEARING FOR
10 FAILURE TO COOPERATE. (a) If the department or Title IV-D agency
11 determines that a person has failed to cooperate with the
12 requirements of the responsibility agreement under Section 31.0031
13 during a one-month period [~~penalties and sanctions should be~~
14 ~~applied under Section 31.0032~~], the person determined to have
15 failed to cooperate [~~not complied~~] or, if different, the person
16 receiving the financial assistance may request a hearing to show
17 good cause for failure to cooperate [~~noncompliance~~] not later than
18 the 13th day after the date on which notice is received under
19 Section 31.0032. On a showing of good cause for failure to
20 cooperate [~~noncompliance~~], the person may receive a financial
21 assistance payment for the month in which the person failed to
22 cooperate [~~sanctions may not be imposed~~].

23 (b) The department shall promptly conduct a hearing if a
24 timely request is made under Subsection (a).

25 (c) If the department finds that good cause for the person's
26 failure to cooperate [~~noncompliance~~] was not shown at a hearing,
27 the department may not make a financial assistance payment in any

1 amount to the person for the person or the person's family for the
2 month in which the person failed to cooperate [~~shall apply~~
3 ~~appropriate sanctions or penalties to or for that person until the~~
4 ~~department, or the Title IV-D agency in a Title IV-D case,~~
5 ~~determines that the person is in compliance with the terms of the~~
6 ~~responsibility agreement~~].

7 (d) The department by rule shall establish criteria for good
8 cause failure to cooperate [~~noncompliance~~] and guidelines for what
9 constitutes a good faith effort on behalf of a recipient under this
10 section.

11 (e) A person has good cause for failing or refusing to
12 cooperate with the requirement of the responsibility agreement
13 under Section 31.0031(d)(1) only if the person's cooperation would
14 be harmful to the physical, mental, or emotional health of the
15 person or the person's dependent child.

16 Sec. 31.0034. ANNUAL REPORT. The department shall prepare
17 and submit an annual report to the legislature that contains
18 statistical information regarding persons who are applying for or
19 receiving financial assistance or services under this chapter,
20 including the number of persons receiving assistance, the type of
21 assistance those persons are receiving, and the length of time
22 those persons have been receiving the assistance. The report also
23 must contain information on:

24 (1) the number of persons to whom [~~sanctions and~~] time
25 limits apply;

26 (2) the number of persons under each time limit
27 category;

1 (3) the number of persons who are exempt from
2 participation under Section 31.012(c);

3 (4) the number of persons who were receiving financial
4 assistance under this chapter but are no longer eligible to receive
5 that assistance because they failed to cooperate [~~comply~~] with the
6 requirements prescribed by Section 31.0031;

7 (5) the number of persons who are no longer eligible to
8 receive financial assistance or transitional benefits under this
9 chapter because:

10 (A) the person's household income has increased
11 due to employment; or

12 (B) the person has exhausted the person's
13 benefits under this chapter; [~~and~~]

14 (6) the number of persons receiving child care, job
15 training, or other support services designed to assist the
16 transition to self-sufficiency; and

17 (7) the number of persons who were eligible to receive
18 financial assistance under this chapter for each one-month period
19 but to whom that financial assistance was not paid because the
20 person failed to cooperate with the requirements of the
21 responsibility agreement under Section 31.0031.

22 (b) Subchapter A, Chapter 31, Human Resources Code, is
23 amended by adding Section 31.00331 to read as follows:

24 Sec. 31.00331. PENALTY FOR FAILURE TO COOPERATE. (a) A
25 person who, during a one-month period, fails to cooperate with the
26 requirements of the responsibility agreement under Section 31.0031
27 without good cause may not receive a financial assistance payment

1 for the person or the person's family for that month.

2 (b) When the department is notified by the Texas Workforce
3 Commission that a client failed to cooperate with work
4 requirements, the department shall suspend the case for 13 days to
5 allow the client to appeal that finding. The case shall be denied
6 if the client fails to request an appeal within that 13-day period.
7 If the client requests an appeal and the appeal is denied, the case
8 shall be denied immediately. If the appeal is upheld, the case
9 shall be reinstated.

10 (c) A person who fails to cooperate with the responsibility
11 agreement for two consecutive months becomes ineligible for
12 financial assistance for the person or the person's family. The
13 person may reapply for financial assistance, but must cooperate
14 with the requirements of the responsibility agreement for a
15 one-month period before receiving an assistance payment for that
16 month.

17 (c) The changes in law made by this section apply to a person
18 receiving financial assistance under Chapter 31, Human Resources
19 Code, on or after the effective date of this section, regardless of
20 the date on which eligibility for financial assistance was
21 determined.

22 SECTION 2.64. Subchapter A, Chapter 31, Human Resources
23 Code, is amended by adding Section 31.0038 to read as follows:

24 Sec. 31.0038. TEMPORARY EXCLUSION OF NEW SPOUSE'S INCOME.

25 (a) Subject to the limitations prescribed by Subsection (b),
26 income earned by an individual who marries an individual receiving
27 financial assistance at the time of the marriage may not be

1 considered by the department during the six-month period following
2 the date of the marriage for purposes of determining:

3 (1) the amount of financial assistance granted to an
4 individual under this chapter for the support of dependent
5 children; or

6 (2) whether the family meets household income and
7 resource requirements for financial assistance under this chapter.

8 (b) To be eligible for the income disregard provided by
9 Subsection (a), the combined income of the individual receiving
10 financial assistance and the new spouse cannot exceed 200 percent
11 of the federal poverty level for their family size.

12 SECTION 2.65. Sections 31.012(b) and (c), Human Resources
13 Code, are amended to read as follows:

14 (b) The department by rule shall establish criteria for good
15 cause failure to cooperate [~~noncompliance~~] and for notification
16 procedures regarding participation in work or employment
17 activities under this section.

18 (c) A person who is the caretaker of a physically or
19 mentally disabled child who requires the caretaker's presence is
20 not required to participate in a program under this section. A
21 [~~Effective January 1, 2000, a single person who is the caretaker of~~
22 ~~a child is not required to participate in a program under this~~
23 ~~section until the caretaker's youngest child at the time the~~
24 ~~caretaker first became eligible for assistance reaches the age of~~
25 ~~three. Effective September 1, 2000, a single person who is the~~
26 ~~caretaker of a child is exempt until the caretaker's youngest child~~
27 ~~at the time the caretaker first became eligible for assistance~~

1 ~~reaches the age of two. Effective September 1, 2001, a]~~ single
2 person who is the caretaker of a child is exempt until the
3 caretaker's youngest child at the time the caretaker first became
4 eligible for assistance reaches the age of one. Notwithstanding
5 Sections 31.0035(b) and 32.0255(b), the department shall provide to
6 a person who is exempt under this subsection and who voluntarily
7 participates in a program under Subsection (a)(2) six months of
8 transitional benefits in addition to the applicable limit
9 prescribed by Section 31.0065.

10 SECTION 2.66. Subchapter A, Chapter 31, Human Resources
11 Code, is amended by adding Section 31.015 to read as follows:

12 Sec. 31.015. HEALTH, ABSTINENCE, AND MARITAL DEVELOPMENT
13 PROGRAM. (a) Subject to available federal funding, the department
14 shall develop and implement a health, abstinence, and marital
15 development program for recipients of financial assistance under
16 this chapter.

17 (b) The health, abstinence, and marital development program
18 shall promote and provide three instructional courses on the
19 following topics:

20 (1) premarital counseling for engaged couples and
21 marriage counseling for married couples that includes skill
22 development for:

23 (A) anger resolution;

24 (B) communication;

25 (C) honoring your spouse; and

26 (D) managing a budget;

27 (2) physical fitness and active lifestyles and

1 nutrition and cooking, including:

2 (A) abstinence for all unmarried persons,
3 including abstinence for persons who have previously been married;
4 and

5 (B) nutrition on a budget; and

6 (3) parenting skills, including parenting skills for
7 character development, academic success, and stepchildren.

8 (c) The department shall provide to a recipient of financial
9 assistance under this chapter additional financial assistance of
10 not more than \$20 for the recipient's participation in a course
11 offered through the health, abstinence, and marital development
12 program up to a maximum payment of \$60 a month.

13 (d) The department may provide the courses or may contract
14 with any person, including a community or faith-based organization,
15 for the provision of the courses.

16 (e) The department shall develop rules as necessary for the
17 administration of the health, abstinence, and marital development
18 program.

19 SECTION 2.67. Section 31.032, Human Resources Code, is
20 amended by adding Subsection (f) to read as follows:

21 (f) An applicant is not eligible for assistance authorized
22 by this chapter if the applicant qualified for the federal earned
23 income tax credit for the tax year preceding the date of
24 application, but did not claim the credit on the applicant's
25 federal income tax return. The department by rule shall require an
26 applicant to provide:

27 (1) proof of having claimed the credit; or

1 (2) sufficient information to support the applicant's
2 determination that the applicant did not qualify for the credit.

3 SECTION 2.68. (a) Section 32.021, Human Resources Code, is
4 amended by adding Subsections (q), (r), and (s) to read as follows:

5 (q) The department shall include in its contracts for the
6 delivery of medical assistance by nursing facilities clearly
7 defined minimum standards that relate directly to the quality of
8 care for residents of those facilities. The department shall
9 consider the recommendations made by the nursing facility quality
10 assurance team under Section 32.060 in establishing the standards.

11 The department shall include in each contract:

12 (1) specific performance measures by which the
13 department may evaluate the extent to which the nursing facility is
14 meeting the standards; and

15 (2) provisions that allow the department to terminate
16 the contract if the nursing facility is not meeting the standards.

17 (r) The department may not award a contract for the delivery
18 of medical assistance to a nursing facility that does not meet the
19 minimum standards that would be included in the contract as
20 required by Subsection (q). The department shall terminate a
21 contract for the delivery of medical assistance by a nursing
22 facility that does not meet or maintain the minimum standards
23 included in the contract in a manner consistent with the terms of
24 the contract.

25 (s) Not later than November 15 of each even-numbered year,
26 the department shall submit a report to the legislature regarding
27 nursing facilities that contract with the department to provide

1 medical assistance under this chapter and other nursing facilities
2 with which the department was prohibited to contract as provided by
3 Subsection (r). The department may include the report required
4 under this section with the report made by the long-term care
5 legislative oversight committee as required by Section 242.654,
6 Health and Safety Code. The report must include:

7 (1) recommendations for improving the quality of
8 information provided to consumers about the facilities;

9 (2) the minimum standards and performance measures
10 included in the department's contracts with those facilities;

11 (3) the performance of the facilities with regard to
12 the minimum standards;

13 (4) the number of facilities with which the department
14 has terminated a contract or to which the department will not award
15 a contract because the facilities do not meet the minimum
16 standards; and

17 (5) the overall impact of the minimum standards on the
18 quality of care provided by the facilities, consumers' access to
19 facilities, and cost of care.

20 (b) Section 32.021(q), Human Resources Code, as added by
21 this section, applies only to a contract for the delivery of medical
22 assistance by a nursing facility that is entered into or renewed on
23 or after May 1, 2004. A contract for the delivery of medical
24 assistance by a nursing facility entered into before that date is
25 governed by the law in effect on the date the contract was entered
26 into, and the former law is continued in effect for that purpose.

27 SECTION 2.69. Subchapter B, Chapter 32, Human Resources

1 Code, is amended by adding Section 32.0212 to read as follows:

2 Sec. 32.0212. DELIVERY OF MEDICAL ASSISTANCE.

3 Notwithstanding any other law and subject to Section 533.0025,
4 Government Code, the department shall provide medical assistance
5 through the Medicaid managed care system implemented under Chapter
6 533, Government Code.

7 SECTION 2.70. (a) Section 32.024, Human Resources Code, is
8 amended by adding Subsections (t-1), (z), and (z-1) to read as
9 follows:

10 (t-1) The department, in its rules governing the medical
11 transportation program, may not prohibit a recipient of medical
12 assistance from receiving transportation services through the
13 program on the basis that the recipient resides in a nursing
14 facility.

15 (z) In its rules and standards governing the vendor drug
16 program, the department, to the extent allowed by federal law and if
17 the department determines the policy to be cost-effective, may
18 ensure that a recipient of prescription drug benefits under the
19 medical assistance program does not, unless authorized by the
20 department in consultation with the recipient's attending
21 physician or advanced practice nurse, receive under the medical
22 assistance program:

23 (1) more than four different outpatient brand-name
24 prescription drugs during a month; or

25 (2) more than a 34-day supply of a brand-name
26 prescription drug at any one time.

27 (z-1) Subsection (z) does not affect any other limit on

1 prescription medications otherwise prescribed by department rule.

2 (b) Section 32.024(z), Human Resources Code, as added by
3 this section, applies to a person receiving medical assistance on
4 or after the effective date of this section regardless of the date
5 on which the person began receiving that medical assistance.

6 SECTION 2.71. Section 32.026(e), Human Resources Code, is
7 amended to read as follows:

8 (e) The department shall permit a recertification review of
9 the eligibility and need for medical assistance of a child under 19
10 years of age to be conducted by a person-to-person telephone
11 interview or through a combination of a telephone interview and
12 mail correspondence instead of through a personal appearance at a
13 department office.

14 SECTION 2.72. Section 10(c), Chapter 584, Acts of the 77th
15 Legislature, Regular Session, 2001, is amended to read as follows:

16 (c) The Health and Human Services Commission or the
17 appropriate state agency operating part of the medical assistance
18 program under Chapter 32, Human Resources Code, shall adopt rules
19 required by Section 32.0261, Human Resources Code, as added by this
20 Act, so that the rules take effect in accordance with that section
21 not earlier than September 1, 2002, or later than June 1, 2004
22 [~~2003~~]. The rules must provide for a 12-month period of continuous
23 eligibility in accordance with that section for a child whose
24 initial or continued eligibility is determined on or after the
25 effective date of the rules.

26 SECTION 2.73. Section 32.028, Human Resources Code, is
27 amended by amending Subsection (g) and adding Subsection (i) to

1 read as follows:

2 (g) Subject to Subsection (i), the [~~The~~] Health and Human
3 Services Commission shall ensure that the rules governing the
4 determination of rates paid for nursing home services improve the
5 quality of care by:

6 (1) providing a program offering incentives for
7 increasing direct care staff and direct care wages and benefits,
8 but only to the extent that appropriated funds are available after
9 money is allocated to base rate reimbursements as determined by the
10 Health and Human Services Commission's nursing facility rate
11 setting methodologies; and

12 (2) if appropriated funds are available after money is
13 allocated for payment of incentive-based rates under Subdivision
14 (1), providing incentives that incorporate the use of a quality of
15 care index, a customer satisfaction index, and a resolved
16 complaints index developed by the commission.

17 (i) The Health and Human Services Commission shall ensure
18 that rules governing the incentives program described by Subsection
19 (g)(1):

20 (1) provide that participation in the program by a
21 nursing home is voluntary;

22 (2) do not impose on a nursing home not participating
23 in the program a minimum spending requirement for direct care staff
24 wages and benefits; and

25 (3) do not set a base rate for a nursing home
26 participating in the program that is more than the base rate for a
27 nursing home not participating in the program.

1 SECTION 2.74. Subchapter B, Chapter 32, Human Resources
2 Code, is amended by adding Section 32.0291 to read as follows:

3 Sec. 32.0291. PREPAYMENT REVIEWS AND POSTPAYMENT HOLDS.

4 (a) Notwithstanding any other law, the department may:

5 (1) perform a prepayment review of a claim for
6 reimbursement under the medical assistance program to determine
7 whether the claim involves fraud or abuse; and

8 (2) as necessary to perform that review, withhold
9 payment of the claim for not more than five working days without
10 notice to the person submitting the claim.

11 (b) Notwithstanding any other law, the department may
12 impose a postpayment hold on payment of future claims submitted by a
13 provider if the department has reliable evidence that the provider
14 has committed fraud or wilful misrepresentation regarding a claim
15 for reimbursement under the medical assistance program. The
16 department must notify the provider of the postpayment hold not
17 later than the fifth working day after the date the hold is imposed.

18 SECTION 2.75. Section 32.032, Human Resources Code, is
19 amended to read as follows:

20 Sec. 32.032. PREVENTION AND DETECTION OF FRAUD AND ABUSE.

21 The department shall adopt reasonable rules for minimizing the
22 opportunity for fraud and abuse, for establishing and maintaining
23 methods for detecting and identifying situations in which a
24 question of fraud or abuse in the program may exist, and for
25 referring cases where fraud or abuse appears to exist to the
26 appropriate law enforcement agencies for prosecution.

27 SECTION 2.76. Section 32.0321(a), Human Resources Code, is

1 amended to read as follows:

2 (a) The department by rule may require each provider of
3 medical assistance in a provider type that has demonstrated
4 significant potential for fraud or abuse to file with the
5 department a surety bond in a reasonable amount. The department by
6 rule shall require a provider of medical assistance to file with the
7 department a surety bond in a reasonable amount if the department
8 identifies an irregularity relating to the provider's services
9 under the medical assistance program that indicates the need for
10 protection against potential future acts of fraud or abuse.

11 SECTION 2.77. (a) Subchapter B, Chapter 32, Human
12 Resources Code, is amended by adding Section 32.0423 to read as
13 follows:

14 Sec. 32.0423. RECOVERY OF REIMBURSEMENTS FROM HEALTH
15 COVERAGE PROVIDERS. To the extent allowed by federal law, a health
16 care service provider must seek reimbursement from available
17 third-party health coverage or insurance before billing the medical
18 assistance program.

19 (b) Section 32.0423, Human Resources Code, as added by this
20 section, applies to a person receiving medical assistance on or
21 after the effective date of this section regardless of the date on
22 which the person began receiving that medical assistance.

23 SECTION 2.78. (a) Subchapter B, Chapter 32, Human
24 Resources Code, is amended by adding Section 32.0462 to read as
25 follows:

26 Sec. 32.0462. MEDICATIONS AND MEDICAL SUPPLIES. The
27 department may adopt rules establishing procedures for the purchase

1 and distribution of medically necessary, over-the-counter
2 medications and medical supplies under the medical assistance
3 program that were previously being provided by prescription if the
4 department determines it is more cost-effective than obtaining
5 those medications and medical supplies through a prescription.

6 (b) Not later than January 1, 2004, the Health and Human
7 Services Commission shall submit a report to the clerks of the
8 standing committees of the senate and house of representatives with
9 jurisdiction over the state Medicaid program describing the status
10 of any cost savings generated by purchasing over-the-counter
11 medications and medical supplies as provided by Section 32.0462,
12 Human Resources Code, as added by this section. The report must be
13 updated not later than January 1, 2005.

14 SECTION 2.79. Section 32.050, Human Resources Code, is
15 amended by adding Subsections (d) and (e) to read as follows:

16 (d) A nursing facility, a home health services provider, or
17 any other similar long-term care services provider must:

18 (1) seek reimbursement from Medicare before billing
19 the medical assistance program for services provided to an
20 individual identified under Subsection (a); and

21 (2) as directed by the department, appeal Medicare
22 claim denials for payment services provided to an individual
23 identified under Subsection (a).

24 (e) If the Medicare reimbursement rate for a service
25 provided to an individual identified under Subsection (a) exceeds
26 the medical assistance reimbursement rate for a comparable service,
27 the medical assistance program may not pay a Medicare coinsurance

1 or deductible amount for that service.

2 SECTION 2.80. (a) Subchapter B, Chapter 32, Human
3 Resources Code, is amended by adding Section 32.060 to read as
4 follows:

5 Sec. 32.060. NURSING FACILITY QUALITY ASSURANCE TEAM. (a)
6 The nursing facility quality assurance team is established to make
7 recommendations to the department designed to promote high-quality
8 care for residents of nursing facilities.

9 (b) The team is composed of nine members appointed by the
10 governor as follows:

11 (1) two physicians with expertise in providing
12 long-term care;

13 (2) one registered nurse with expertise in providing
14 long-term care;

15 (3) three nursing facility advocates not affiliated
16 with the nursing facility industry; and

17 (4) three representatives of the nursing facility
18 industry.

19 (c) The governor shall designate a member of the team to
20 serve as presiding officer. The members of the team shall elect any
21 other necessary officers.

22 (d) The team shall meet at the call of the presiding
23 officer.

24 (e) A member of the team serves at the will of the governor.

25 (f) A member of the team may not receive compensation for
26 -serving on the team but is entitled to reimbursement for travel
27 expenses incurred by the member while conducting the business of

1 the team as provided by the General Appropriations Act.

2 (g) The team shall:

3 (1) develop and recommend clearly defined minimum
4 standards to be included in contracts between the department and
5 nursing facilities for the delivery of medical assistance under
6 this chapter that are designed to:

7 (A) ensure that the care provided by nursing
8 facilities to residents who are recipients of medical assistance
9 meets or exceeds the minimum acceptable standard of care; and

10 (B) encourage nursing facilities to provide the
11 highest quality of care to those residents; and

12 (2) develop and recommend improvements to consumers'
13 access to information regarding the quality of care provided by
14 nursing facilities that contract with the department to provide
15 medical assistance, including improvements in:

16 (A) the types and amounts of information to which
17 consumers have access, such as expanding the types and amounts of
18 information available through the department's Internet website;
19 and

20 (B) the department's data systems that compile
21 nursing facilities' inspection or survey data and other data
22 relating to quality of care in nursing facilities.

23 (h) In developing minimum standards for contracts as
24 required by Subsection (g)(1), the team shall:

25 (1) study the risk factors identified by the Texas
26 Department of Insurance as contributing to lawsuits against nursing
27 facilities;

1 (2) consider for inclusion in the minimum standards:

2 (A) the practices the Texas Department of
3 Insurance recommends nursing facilities adopt to reduce the
4 likelihood of those lawsuits; and

5 (B) other standards designed to improve the
6 quality of care; and

7 (3) focus on a minimum number of critical standards
8 necessary to identify nursing facilities with poor quality services
9 that should not be awarded contracts for the delivery of medical
10 assistance.

11 (i) The department shall ensure the accuracy of information
12 provided to the team for use by the team in performing the team's
13 duties under this section. The Health and Human Services
14 Commission shall provide administrative support and resources to
15 the team and request additional administrative support and
16 resources from health and human services agencies as necessary.

17 (b) The governor shall appoint the members of the nursing
18 facility quality assurance team established under Section 32.060,
19 Human Resources Code, as added by this section, not later than
20 January 1, 2004.

21 (c) The nursing facility quality assurance team shall
22 develop and make the recommendations required by Section 32.060,
23 Human Resources Code, as added by this section, not later than May
24 1, 2004.

25 (d) The Texas Department of Human Services shall implement
26 the recommendations for improving the quality of nursing facility
27 information provided to consumers that are made by the nursing

1 facility quality assurance team as required by Section 32.060,
2 Human Resources Code, as added by this section, and that the
3 department determines are appropriate not later than September 1,
4 2004.

5 SECTION 2.81. Subchapter B, Chapter 32, Human Resources
6 Code, is amended by adding Section 32.061 to read as follows:

7 Sec. 32.061. COMMUNITY ATTENDANT SERVICES PROGRAM. Any home
8 and community-based services that the department provides under
9 Section 1929, Social Security Act (42 U.S.C. Section 1396t) and its
10 subsequent amendments to functionally disabled individuals who
11 have income that exceeds the limit established by federal law for
12 Supplemental Security Income (SSI) (42 U.S.C. Section 1381 et seq.)
13 and its subsequent amendments shall be provided through the
14 community attendant services program.

15 SECTION 2.82. (a) Subchapter B, Chapter 32, Human
16 Resources Code, is amended by adding Section 32.063 to read as
17 follows:

18 Sec. 32.063. THIRD-PARTY BILLING VENDORS. (a) A
19 third-party billing vendor may not submit a claim with the
20 department for reimbursement on behalf of a provider of medical
21 services under the medical assistance program unless the vendor has
22 entered into a contract with the department authorizing that
23 activity.

24 (b) To the extent practical, the contract shall contain
25 provisions comparable to the provisions contained in contracts
26 between the department and providers of medical services, with an
27 emphasis on provisions designed to prevent fraud or abuse under the

1 medical assistance program. At a minimum, the contract must
2 require the third-party billing vendor to:

3 (1) provide documentation of the vendor's authority to
4 bill on behalf of each provider for whom the vendor submits claims;

5 (2) submit a claim in a manner that permits the
6 department to identify and verify the vendor, any computer or
7 telephone line used in submitting the claim, any relevant user
8 password used in submitting the claim, and any provider number
9 referenced in the claim; and

10 (3) subject to any confidentiality requirements
11 imposed by federal law, provide the department, the office of the
12 attorney general, or authorized representatives with:

13 (A) access to any records maintained by the
14 vendor, including original records and records maintained by the
15 vendor on behalf of a provider, relevant to an audit or
16 investigation of the vendor's services or another function of the
17 department or office of the attorney general relating to the
18 vendor; and

19 (B) if requested, copies of any records described
20 by Paragraph (A) at no charge to the department, the office of the
21 attorney general, or authorized representatives.

22 (c) On receipt of a claim submitted by a third-party billing
23 vendor, the department shall send a remittance notice directly to
24 the provider referenced in the claim. The notice must:

25 (1) include detailed information regarding the claim
26 submitted on behalf of the provider; and

27 (2) require the provider to review the claim for

1 accuracy and notify the department promptly regarding any errors.

2 (d) The department shall take all action necessary,
3 including any modifications of the department's claims processing
4 system, to enable the department to identify and verify a
5 third-party billing vendor submitting a claim for reimbursement
6 under the medical assistance program, including identification and
7 verification of any computer or telephone line used in submitting
8 the claim, any relevant user password used in submitting the claim,
9 and any provider number referenced in the claim.

10 (b) Section 32.063, Human Resources Code, as added by this
11 section, takes effect January 1, 2004.

12 SECTION 2.83. (a) Subchapter B, Chapter 32, Human
13 Resources Code, is amended by adding Section 32.064 to read as
14 follows:

15 Sec. 32.064. COST SHARING. (a) To the extent permitted
16 under Title XIX, Social Security Act (42 U.S.C. Section 1396 et
17 seq.), as amended, and any other applicable law or regulations, the
18 Health and Human Services Commission shall adopt provisions
19 requiring recipients of medical assistance to share the cost of
20 medical assistance, including provisions requiring recipients to
21 pay:

22 (1) a copayment for services provided under the
23 medical assistance program;

24 (2) an enrollment fee;

25 (3) a deductible; or

26 (4) coinsurance or a portion of the plan premium, if
27 the recipients receive medical assistance under the Medicaid

1 managed care program under Chapter 533, Government Code, or a
2 Medicaid managed care demonstration project under Section 32.041.

3 (b) Subject to Subsection (d), cost-sharing provisions
4 adopted under this section shall ensure that families with higher
5 levels of income are required to pay progressively higher
6 percentages of the cost of the medical assistance.

7 (c) If cost-sharing provisions imposed under Subsection (a)
8 include requirements that recipients pay a portion of the plan
9 premium, the commission shall specify the manner in which the
10 premium is paid. The commission may require that the premium be
11 paid to the commission, an agency operating part of the medical
12 assistance program, or the provider of medical assistance.

13 (d) Cost-sharing provisions adopted under this section may
14 be determined based on the maximum level authorized under federal
15 law and applied to income levels in a manner that minimizes
16 administrative costs.

17 (e) During the fiscal biennium ending August 31, 2005, the
18 commission shall evaluate the effect of copayment requirements to
19 determine the cost to providers of collecting and recording
20 copayments, the frequency of payments made by recipients, including
21 any regional variation in collection, and the extent to which
22 copayment requirements modify recipient behavior in accessing
23 services. Any reduction to provider reimbursement rates, in
24 anticipation of the collection of copayments, may be made only
25 after the completion of the evaluation required by this subsection.

26 (b) The changes in law made by Section 32.064, Human
27 Resources Code, as added by this section, apply to a person

1 receiving medical assistance on or after the effective date of this
2 section, regardless of the date on which eligibility for that
3 assistance was determined.

4 SECTION 2.84. Section 73.0051, Human Resources Code, is
5 amended by adding Subsection (1) to read as follows:

6 (1) The council by rule may establish a system of payments
7 by families of children receiving services under this chapter,
8 including a schedule of sliding fees, in a manner consistent with 34
9 C.F.R. Sections 303.12(a)(3)(iv), 303.520, and 303.521.

10 SECTION 2.85. (a) Sections 91.027(a) and (b), Human
11 Resources Code, are amended to read as follows:

12 (a) To the extent that funds are available under Sections
13 521.421(f), as added by Chapter 510, Acts of the 75th Legislature,
14 Regular Session, 1997, and 521.422(b), Transportation Code, the
15 [The] commission shall operate [develop] a Blindness Education,
16 Screening, and Treatment Program to provide:

17 (1) blindness prevention education and [to provide]
18 screening and treatment to prevent blindness for residents who are
19 not covered under an adequate health benefit plan; and

20 (2) transition services to blind disabled individuals
21 eligible for vocational rehabilitation services under Section
22 91.052.

23 (b) ~~[The commission shall implement the program only to the~~
24 ~~extent that funds are available under Section 521.421(f),~~
25 ~~Transportation Code.]~~ The program shall include:

26 (1) public education about blindness and other eye
27 conditions;

1 (2) screenings and eye examinations to identify
2 conditions that may cause blindness; ~~and~~

3 (3) treatment procedures necessary to prevent
4 blindness; and

5 (4) transition services.

6 (b) The Texas Commission for the Blind shall establish the
7 consolidated program under Section 91.027, Human Resources Code, as
8 amended by this section, not later than the 90th day after the
9 effective date of this section.

10 SECTION 2.86. (a) Section 111.052, Human Resources Code,
11 is amended to read as follows:

12 Sec. 111.052. GENERAL FUNCTIONS. (a) The commission
13 shall, to the extent of resources available and priorities
14 established by the board, provide rehabilitation services directly
15 or through public or private resources to individuals determined by
16 the commission to be eligible for the services under a vocational
17 rehabilitation program~~[, an extended rehabilitation services~~
18 ~~program]~~ or other program established to provide rehabilitative
19 services.

20 (b) In carrying out the purposes of this chapter, the
21 commission may:

22 (1) cooperate with other departments, agencies,
23 political subdivisions, and institutions, both public and private,
24 in providing the services authorized by this chapter to eligible
25 individuals, in studying the problems involved, and in planning,
26 establishing, developing, and providing necessary or desirable
27 programs, facilities, and services, including those jointly

1 administered with state agencies;

2 (2) enter into reciprocal agreements with other
3 states;

4 (3) establish or construct rehabilitation facilities
5 and workshops, contract with or provide grants to agencies,
6 organizations, or individuals as necessary to implement this
7 chapter, make contracts or other arrangements with public and other
8 nonprofit agencies, organizations, or institutions for the
9 establishment of workshops and rehabilitation facilities, and
10 operate facilities for carrying out the purposes of this chapter;

11 (4) conduct research and compile statistics relating
12 to the provision of services to or the need for services by disabled
13 individuals;

14 (5) provide for the establishment, supervision,
15 management, and control of small business enterprises to be
16 operated by individuals with significant disabilities where their
17 operation will be improved through the management and supervision
18 of the commission;

19 (6) contract with schools, hospitals, private
20 industrial firms, and other agencies and with doctors, nurses,
21 technicians, and other persons for training, physical restoration,
22 transportation, and other rehabilitation services; and

23 (7) assess the statewide need for services necessary
24 to prepare students with disabilities for a successful transition
25 to employment, establish collaborative relationships with each
26 school district with education service centers to the maximum
27 extent possible within available resources, and develop strategies

1 to assist vocational rehabilitation counselors in identifying and
2 reaching students in need of transition planning [~~contract with a~~
3 ~~public or private agency to provide and pay for rehabilitative~~
4 ~~services under the extended rehabilitation services program,~~
5 ~~including alternative sheltered employment or community integrated~~
6 ~~employment for a person participating in the program]~~.

7 (b) Sections 111.002(7), 111.0525(a), and 111.073, Human
8 Resources Code, are repealed.

9 SECTION 2.87. Section 111.060, Human Resources Code, is
10 amended by adding Subsection (d) to read as follows:

11 (d) Notwithstanding any other provision of this section,
12 any money in the comprehensive rehabilitation fund may be used for
13 general governmental purposes if:

14 (1) the comptroller certifies that appropriations
15 from general revenue made by the preceding legislature for the
16 current biennium exceed available general revenues and cash
17 balances for the remainder of that biennium;

18 (2) an estimate of anticipated revenues for a
19 succeeding biennium prepared by the comptroller in accordance with
20 Section 49a, Article III, Texas Constitution, is less than the
21 revenues that are estimated at the same time by the comptroller to
22 be available for the current biennium; or

23 (3) the Legislative Budget Board otherwise determines
24 that a state fiscal emergency exists that requires use of any money
25 in the fund for general governmental purposes.

26 SECTION 2.88. (a) Subchapter I, Chapter 264, Family Code,
27 is transferred to Chapter 33, Education Code, is redesignated as

1 Subchapter E, Chapter 33, Education Code, and is amended to read as
2 follows:

3 SUBCHAPTER E [~~±~~]. COMMUNITIES IN SCHOOLS PROGRAM

4 Sec. 33.151 [~~264.751~~]. DEFINITIONS. In this subchapter:

5 (1) "Department" [~~"Agency"~~] means the Department of
6 Protective and Regulatory Services [~~Texas Education Agency~~].

7 (2) "Communities In Schools program" means an
8 exemplary youth dropout prevention program.

9 (3) "Delinquent conduct" has the meaning assigned by
10 Section 51.03, Family Code.

11 (4) "Student at risk of dropping out of school" means:

12 (A) a student at risk of dropping out of school as
13 defined [~~has the meaning assigned~~] by Section 29.081;

14 (B) a student who is educationally
15 disadvantaged; [~~, Education Code, or means a student who is~~
16 ~~eligible for a free or reduced lunch~~] or

17 (C) a student who is in family conflict or
18 crisis.

19 Sec. 33.152 [~~264.752~~]. STATEWIDE OPERATION OF PROGRAM. It
20 is the intent of the legislature that the Communities In Schools
21 program operate throughout this state. It is also the intent of the
22 legislature that programs established under Chapter 305, Labor
23 Code, as that chapter existed on August 31, 1999, and its
24 predecessor statute, the Texas Unemployment Compensation Act
25 (Article 5221b-9d, Vernon's Texas Civil Statutes), and programs
26 established under this subchapter shall remain eligible to
27 participate in the Communities In Schools program if funds are

1 available and if their performance meets the criteria established
2 by the agency [~~department~~] for renewal of their contracts.

3 Sec. 33.153 [~~264.753~~]. STATE DIRECTOR. The commissioner
4 [~~executive director of the department~~] shall designate a state
5 director for the Communities In Schools program.

6 Sec. 33.154 [~~264.754~~]. DUTIES OF STATE DIRECTOR. The state
7 director shall:

8 (1) coordinate the efforts of the Communities In
9 Schools program with other social service organizations and
10 agencies and with public school personnel to provide services to
11 students who are at risk of dropping out of school or engaging in
12 delinquent conduct, including students who are in family conflict
13 or emotional crisis;

14 (2) set standards for the Communities In Schools
15 program and establish state performance goals, objectives, and
16 measures for the program;

17 (3) obtain information to determine accomplishment of
18 state performance goals, objectives, and measures;

19 (4) promote and market the program in communities in
20 which the program is not established;

21 (5) help communities that want to participate in the
22 program establish a local funding base; and

23 (6) provide training and technical assistance for
24 participating communities and programs.

25 Sec. 33.155 [~~264.755~~]. DEPARTMENT [~~AGENCY~~] COOPERATION;
26 MEMORANDUM OF UNDERSTANDING. (a) The agency, the department, and
27 Communities In Schools, Inc. shall work together to maximize the

1 effectiveness of the Communities In Schools program.

2 (b) The agency and the department shall develop and
3 [~~mutually~~] agree to a memorandum of understanding to clearly define
4 the responsibilities of the agency and of the department under this
5 subchapter. The memorandum must address:

6 (1) the roles [~~role~~] of the agency and department in
7 encouraging local business to participate in local Communities In
8 Schools programs;

9 (2) the role of the agency in obtaining information
10 from participating school districts;

11 (3) the use of federal or state funds available to the
12 agency or the department for programs of this nature; and

13 (4) other areas identified by the agency and the
14 department that require clarification.

15 (c) The agency and the department shall adopt rules to
16 implement the memorandum and shall update the memorandum and rules
17 annually.

18 Sec. 33.156 [~~264.756~~]. FUNDING; EXPANSION OF
19 PARTICIPATION. (a) The agency [~~department~~] shall develop and
20 implement an equitable formula for the funding of local Communities
21 In Schools programs. The formula may provide for the reduction of
22 funds annually contributed by the state to a local program by an
23 amount not more than 50 percent of the amount contributed by the
24 state for the first year of the program. The formula must consider
25 the financial resources of individual communities and school
26 districts. Savings accomplished through the implementation of the
27 formula may be used to extend services to counties and

1 municipalities currently not served by a local program or to extend
2 services to counties and municipalities currently served by an
3 existing local program.

4 (b) Each local Communities In Schools program shall develop
5 a funding plan which ensures that the level of services is
6 maintained if state funding is reduced.

7 (c) A local Communities In Schools program may accept
8 federal funds, state funds, private contributions, grants, and
9 public and school district funds to support a campus participating
10 in the program.

11 Sec. 33.157 [~~264.757~~]. PARTICIPATION IN PROGRAM. An
12 elementary or secondary school receiving funding [~~designated~~]
13 under Section 33.156 [~~264.756~~] shall participate in a local
14 Communities In Schools program if the number of students enrolled
15 in the school who are at risk of dropping out of school is equal to
16 at least 10 percent of the number of students in average daily
17 attendance at the school, as determined by the agency.

18 Sec. 33.158 [~~264.758~~]. DONATIONS TO PROGRAM. (a) The
19 agency [~~department~~] may accept a donation of services or money or
20 other property that the agency [~~department~~] determines furthers the
21 lawful objectives of the agency [~~department~~] in connection with the
22 Communities In Schools program.

23 (b) Each donation, with the name of the donor and the
24 purpose of the donation, must be reported in the public records of
25 the agency [~~department~~].

26 (b) Section 302.062(g), Labor Code, is amended to read as
27 follows:

1 (g) Block grant funding under this section does not apply
2 to:

3 (1) the work and family policies program under Chapter
4 81;

5 (2) a program under the skills development fund
6 created under Chapter 303;

7 (3) the job counseling program for displaced
8 homemakers under Chapter 304;

9 (4) the Communities In Schools program under
10 Subchapter E [~~F~~], Chapter 33 [~~264~~], Education [~~Family~~] Code, to the
11 extent that funds are available to the commission for that program;

12 (5) the reintegration of offenders program under
13 Chapter 306;

14 (6) apprenticeship programs under Chapter 133,
15 Education Code;

16 (7) the continuity of care program under Section
17 501.095, Government Code;

18 (8) employment programs under Chapter 31, Human
19 Resources Code;

20 (9) the senior citizens employment program under
21 Chapter 101, Human Resources Code;

22 (10) the programs described by Section 302.021(b)(3);

23 (11) the community service program under the National
24 and Community Service Act of 1990 (42 U.S.C. Section 12501 et seq.);

25 (12) the trade adjustment assistance program under
26 Part 2, Subchapter II, Trade Act of 1974 (19 U.S.C. Section 2271 et
27 seq.);

1 (13) the programs to enhance the employment
2 opportunities of veterans; and

3 (14) the functions of the State Occupational
4 Information Coordinating Committee.

5 (c) On September 1, 2003:

6 (1) all powers, duties, functions, and activities
7 relating to the Communities In Schools program assigned to or
8 performed by the Department of Protective and Regulatory Services
9 immediately before September 1, 2003, are transferred to the Texas
10 Education Agency;

11 (2) all funds, rights, obligations, and contracts of
12 the Department of Protective and Regulatory Services related to the
13 Communities In Schools program are transferred to the Texas
14 Education Agency for the Communities In Schools program;

15 (3) all property and records in the custody of the
16 Department of Protective and Regulatory Services related to the
17 Communities In Schools program and all funds appropriated by the
18 legislature for the Communities In Schools program are transferred
19 to the Texas Education Agency for the Communities In Schools
20 program; and

21 (4) all employees of the Department of Protective and
22 Regulatory Services who primarily perform duties related to the
23 Communities In Schools program become employees of the Texas
24 Education Agency, to be assigned duties related to the Communities
25 In Schools program.

26 (d) For the 2003 and 2004 state fiscal years, all full-time
27 equivalent positions (FTEs) authorized by the General

1 Appropriations Act for the Communities In Schools program are
2 transferred to the Texas Education Agency and are not included in
3 determining the agency's compliance with any limitation on the
4 number of full-time equivalent positions (FTEs) imposed by the
5 General Appropriations Act.

6 (e) A reference in law or administrative rule to the
7 Department of Protective and Regulatory Services that relates to
8 the Communities In Schools program means the Texas Education
9 Agency. A reference in law or administrative rule to the executive
10 director of the Department of Protective and Regulatory Services
11 that relates to the Communities In Schools program means the
12 commissioner of education.

13 (f) A rule of the Department of Protective and Regulatory
14 Services relating to the Communities In Schools program continues
15 in effect as a rule of the commissioner of education until
16 superseded by rule of the commissioner of education. The secretary
17 of state is authorized to adopt rules as necessary to expedite the
18 implementation of this subsection.

19 (g) The transfer of the Communities In Schools program and
20 associated powers, duties, functions, and activities under this
21 section does not affect or impair any act done, any obligation,
22 right, order, license, permit, rule, criterion, standard, or
23 requirement existing, any investigation begun, or any penalty
24 accrued under former law, and that law remains in effect for any
25 action concerning those matters.

26 (h) An action brought or proceeding commenced before
27 September 1, 2003, including a contested case or a remand of any

1 action or proceeding by a reviewing court, is governed by the law
2 and rules applicable to the action or proceeding immediately before
3 September 1, 2003.

4 SECTION 2.89. (a) Section 2(c), Article 4.11, Insurance
5 Code, is amended to read as follows:

6 (c) "Gross premiums" are the total gross amount of all
7 premiums, membership fees, assessments, dues, and any other
8 considerations for such insurance received during the taxable year
9 on each and every kind of such insurance policy or contract covering
10 persons located in the State of Texas and arising from the types of
11 insurance specified in Section 1 of this article, but deducting
12 returned premiums, any dividends applied to purchase paid-up
13 additions to insurance or to shorten the endowment or premium
14 payment period, and excluding those premiums received from
15 insurance carriers for reinsurance and there shall be no deduction
16 for premiums paid for reinsurance. For purposes of this article, a
17 stop-loss or excess loss insurance policy issued to a health
18 maintenance organization, as defined under the Texas Health
19 Maintenance Organization Act (Chapter 20A, Vernon's Texas
20 Insurance Code), shall be considered reinsurance. Such gross
21 premiums shall not include premiums received from the [~~Treasury of~~
22 ~~the State of Texas or from the~~] Treasury of the United States for
23 [~~insurance contracted for by the state or federal government for~~
24 ~~the purpose of providing welfare benefits to designated welfare~~
25 ~~recipients or for~~] insurance contracted for by the [~~state or~~
26 federal government in accordance with or in furtherance of the
27 provisions of Title XVIII of [~~2, Human Resources Code, or~~] the

1 Federal Social Security Act (42 U.S.C. Section 1395c et seq.) and
2 its subsequent amendments. The gross premiums receipts so reported
3 shall not include the amount of premiums paid on group health,
4 accident, and life policies in which the group covered by the policy
5 consists of a single nonprofit trust established to provide
6 coverage primarily for employees of:

7 (1) a municipality, county, or hospital district in
8 this state; or

9 (2) a county or municipal hospital, without regard to
10 whether the employees are employees of the county or municipality
11 or another entity operating the hospital on behalf of the county or
12 municipality.

13 (b) The change in law made by this section applies only to a
14 tax report originally due on or after January 1, 2004.

15 SECTION 2.90. (a) Article 4.17(a), Insurance Code, is
16 amended to read as follows:

17 (a) The commissioner shall annually determine the rate of
18 assessment of a maintenance tax to be paid on an annual, semiannual,
19 or other periodic basis, as determined by the comptroller. The rate
20 of assessment may not exceed .04 percent of the correctly reported
21 gross premiums of life, health, and accident insurance coverages
22 and the gross considerations for annuity and endowment contracts
23 collected by all authorized insurers writing life, health, and
24 accident insurance, annuity, or endowment contracts in this state.
25 The comptroller shall collect the maintenance tax. For purposes of
26 this article, the gross premiums on which an assessment is based may
27 not include premiums received from [~~this state or~~] the United

1 States for insurance contracted for by [~~this state or~~] the United
2 States [~~for the purpose of providing welfare benefits to designated~~
3 ~~welfare recipients or for insurance contracted for by this state or~~
4 ~~the United States~~] in accordance with or in furtherance of Title
5 XVIII of [~~2, Human Resources Code, or~~] the federal Social Security
6 Act (42 U.S.C. Section 1395c et seq.) and its subsequent amendments
7 [~~(42 U.S.C. Section 301 et seq.)~~].

8 (b) The change in law made by this section applies only to a
9 tax report originally due on or after January 1, 2004.

10 SECTION 2.91. (a) Section 20A.33(d), Texas Health
11 Maintenance Organization Act (Article 20A.33, Vernon's Texas
12 Insurance Code), is amended to read as follows:

13 (d) The commissioner shall annually determine the rate of
14 assessment of a per capita maintenance tax to be paid on an annual
15 or semiannual basis, on the correctly reported gross revenues for
16 the issuance of health maintenance certificates or contracts
17 collected by all authorized health maintenance organizations
18 issuing such coverages in this state. The rate of assessment may
19 not exceed \$2 for each enrollee. The rate of assessment may differ
20 between basic health care plans, limited health care service plans,
21 and single health care service plans and shall equitably reflect
22 any differences in regulatory resources attributable to each type
23 of plan. The comptroller shall collect the maintenance tax. For
24 purposes of this section, the amount of maintenance tax assessed
25 may not be computed on enrollees who as individual certificate
26 holders or their dependents are covered by a master group policy
27 paid for by revenues received from [~~this state or~~] the United States

1 for insurance contracted for by [~~this state or~~] the United States
2 [~~for the purpose of providing welfare benefits to designated~~
3 ~~welfare recipients or for insurance contracted for by this state or~~
4 ~~the United States~~] in accordance with or in furtherance of Title
5 XVIII of [2, Human Resources Code, or] the federal Social Security
6 Act (42 U.S.C. Section 1395c et seq.) and its subsequent amendments
7 [~~(42 U.S.C. Section 301 et seq.)~~].

8 (b) The change in law made by this section applies only to a
9 tax report originally due on or after January 1, 2004.

10 SECTION 2.92. Section 2, Article 21.52K, Insurance Code, is
11 amended by amending Subsections (c) and (d) and adding Subsection
12 (g) to read as follows:

13 (c) If an individual described by Subsection (a), ~~(b)~~,
14 or (g) of this section is not eligible to enroll in the plan unless a
15 family member of the individual is also enrolled in the plan, the
16 issuer, on receipt of the written notice or request under
17 Subsection (a), ~~(b)~~, or (g) of this section, shall enroll both
18 the individual and the family member in the plan.

19 (d) Unless enrollment occurs during an established
20 enrollment period, enrollment under this article takes effect on
21 the first day of the calendar month that begins at least 30 days
22 after the date written notice or request is received by the issuer
23 under Subsection (a), ~~(b)~~, or (g) of this section.

24 (g) The issuer of a group health benefit plan shall permit
25 an individual who is otherwise eligible for enrollment in the plan
26 to enroll in the plan without regard to any enrollment period
27 restriction if the individual:

1 (1) becomes ineligible for medical assistance under
2 the state Medicaid program or enrollment in the state child health
3 plan under Chapter 62, Health and Safety Code, after initially
4 establishing eligibility; and

5 (2) provides a written request for enrollment in the
6 group health benefit plan not later than the 30th day after the date
7 the individual's eligibility for the state Medicaid program or the
8 state child health plan terminated.

9 SECTION 2.93. (a) Article 21.53F, Insurance Code, as added
10 by Chapter 683, Acts of the 75th Legislature, Regular Session,
11 1997, is amended by adding Section 9 to read as follows:

12 Sec. 9. OFFER OF COVERAGE REQUIRED; CERTAIN THERAPIES FOR
13 CHILDREN WITH DEVELOPMENTAL DELAYS. (a) For purposes of this
14 section, rehabilitative and habilitative therapies include:

- 15 (1) occupational therapy evaluations and services;
16 (2) physical therapy evaluations and services;
17 (3) speech therapy evaluations and services; and
18 (4) dietary or nutritional evaluations.

19 (b) The issuer of a health benefit plan must offer coverage
20 that complies with this section. The individual or group policy or
21 contract holder may reject coverage required to be offered under
22 this subsection.

23 (c) A health benefit plan that provides coverage for
24 rehabilitative and habilitative therapies under this section may
25 not prohibit or restrict payment for covered services provided to a
26 child and determined to be necessary to and provided in accordance
27 with an individualized family service plan issued by the

1 Interagency Council on Early Childhood Intervention under Chapter
2 73, Human Resources Code.

3 (d) Rehabilitative and habilitative therapies described by
4 Subsection (c) of this section must be covered in the amount,
5 duration, scope, and service setting established in the child's
6 individualized family service plan.

7 (e) Under the coverage required to be offered under this
8 section, a health benefit plan issuer may not:

9 (1) apply the cost of rehabilitative and habilitative
10 therapies described by Subsection (c) of this section to an annual
11 or lifetime maximum plan benefit or similar provision under the
12 plan; or

13 (2) use the cost of rehabilitative or habilitative
14 therapies described by Subsection (c) of this section as the sole
15 justification for:

16 (A) increasing plan premiums; or

17 (B) terminating the insured's or enrollee's
18 participation in the plan.

19 (b) The change in law made by this section applies only to a
20 health benefit plan that is delivered, issued for delivery, or
21 renewed on or after January 1, 2004. A health benefit plan that is
22 delivered, issued for delivery, or renewed before January 1, 2004,
23 is governed by the law as it existed immediately before the
24 effective date of this section, and the former law is continued in
25 effect for that purpose.

26 SECTION 2.94. Section 455.0015, Transportation Code, is
27 amended by adding Subsection (c) to read as follows:

1 (c) The Texas Department of Health shall contract with the
2 department for the department to assume all responsibilities of the
3 Texas Department of Health relating to the provision of
4 transportation services.

5 SECTION 2.95. Section 40.002, Human Resources Code, is
6 amended by adding Subsection (f) to read as follows:

7 (f) The department shall contract with the Texas Department
8 of Transportation for the Texas Department of Transportation to
9 assume all responsibilities of the department relating to the
10 provision of transportation services.

11 SECTION 2.96. Section 22.001, Human Resources Code, is
12 amended by adding Subsection (e) to read as follows:

13 (e) The department shall contract with the Texas Department
14 of Transportation for the Texas Department of Transportation to
15 assume all responsibilities of the department relating to the
16 provision of transportation services.

17 SECTION 2.97. Section 91.021, Human Resources Code, is
18 amended by adding Subsection (g) to read as follows:

19 (g) The commission shall contract with the Texas Department
20 of Transportation for the Texas Department of Transportation to
21 assume all responsibilities of the commission relating to the
22 provision of transportation services.

23 SECTION 2.98. Section 101.0256, Human Resources Code, is
24 amended to read as follows:

25 Sec. 101.0256. COORDINATED ACCESS TO LOCAL
26 SERVICES. (a) The department and the Texas Department of Human
27 Services shall develop standardized assessment procedures to share

1 information on common clients served in a similar service region.

2 (b) The department shall contract with the Texas Department
3 of Transportation for the Texas Department of Transportation to
4 assume all responsibilities of the department relating to the
5 provision of transportation services.

6 SECTION 2.99. Section 111.0525, Human Resources Code, is
7 amended by adding Subsection (d) to read as follows:

8 (d) The commission shall contract with the Texas Department
9 of Transportation for the Texas Department of Transportation to
10 assume all responsibilities of the commission relating to the
11 provision of transportation services.

12 SECTION 2.100. Section 461.012(a), Health and Safety Code,
13 is amended to read as follows:

14 (a) The commission shall:

15 (1) provide for research and study of the problems of
16 chemical dependency in this state and seek to focus public
17 attention on those problems through public information and
18 education programs;

19 (2) plan, develop, coordinate, evaluate, and
20 implement constructive methods and programs for the prevention,
21 intervention, treatment, and rehabilitation of chemical dependency
22 in cooperation with federal and state agencies, local governments,
23 organizations, and persons, and provide technical assistance,
24 funds, and consultation services for statewide and community-based
25 services;

26 (3) cooperate with and enlist the assistance of:

27 (A) other state, federal, and local agencies;

1 (B) hospitals and clinics;

2 (C) public health, welfare, and criminal justice
3 system authorities;

4 (D) educational and medical agencies and
5 organizations; and

6 (E) other related public and private groups and
7 persons;

8 (4) expand chemical dependency services for children
9 when funds are available because of the long-term benefits of those
10 services to the state and its citizens;

11 (5) sponsor, promote, and conduct educational
12 programs on the prevention and treatment of chemical dependency,
13 and maintain a public information clearinghouse to purchase and
14 provide books, literature, audiovisuals, and other educational
15 material for the programs;

16 (6) sponsor, promote, and conduct training programs
17 for persons delivering prevention, intervention, treatment, and
18 rehabilitation services and for persons in the criminal justice
19 system or otherwise in a position to identify chemically dependent
20 persons and their families in need of service;

21 (7) require programs rendering services to chemically
22 dependent persons to safeguard those persons' legal rights of
23 citizenship and maintain the confidentiality of client records as
24 required by state and federal law;

25 (8) maximize the use of available funds for direct
26 services rather than administrative services;

27 (9) consistently monitor the expenditure of funds and

1 the provision of services by all grant and contract recipients to
2 assure that the services are effective and properly staffed and
3 meet the standards adopted under this chapter;

4 (10) make the monitoring reports prepared under
5 Subdivision (9) a matter of public record;

6 (11) license treatment facilities under Chapter 464;

7 (12) use funds appropriated to the commission to carry
8 out this chapter and maximize the overall state allotment of
9 federal funds;

10 (13) develop and implement policies that will provide
11 the public with a reasonable opportunity to appear before the
12 commission and to speak on any issue under the commission's
13 jurisdiction;

14 (14) establish minimum criteria that peer assistance
15 programs must meet to be governed by and entitled to the benefits of
16 a law that authorizes licensing and disciplinary authorities to
17 establish or approve peer assistance programs for impaired
18 professionals;

19 (15) adopt rules governing the functions of the
20 commission, including rules that prescribe the policies and
21 procedures followed by the commission in administering any
22 commission programs;

23 (16) plan, develop, coordinate, evaluate, and
24 implement constructive methods and programs to provide healthy
25 alternatives for youth at risk of selling controlled substances;

26 (17) submit to the federal government reports and
27 strategies necessary to comply with Section 1926 of the federal

1 Alcohol, Drug Abuse, and Mental Health Administration
2 Reorganization Act, Pub. L. 102-321 (42 U.S.C. Section 300x-26);
3 reports and strategies are to be coordinated with appropriate state
4 governmental entities; ~~and~~

5 (18) regulate, coordinate, and provide training for
6 alcohol awareness courses required under Section 106.115,
7 Alcoholic Beverage Code, and may charge a fee for an activity
8 performed by the commission under this subdivision; and

9 (19) contract with the Texas Department of
10 Transportation for the Texas Department of Transportation to assume
11 all responsibilities of the commission relating to the provision of
12 transportation services.

13 SECTION 2.101. Section 533.012, Health and Safety Code, is
14 amended to read as follows:

15 Sec. 533.012. COOPERATION OF STATE AGENCIES. (a) At the
16 department's request, all state departments, agencies, officers,
17 and employees shall cooperate with the department in activities
18 that are consistent with their functions.

19 (b) The department shall contract with the Texas Department
20 of Transportation for the Texas Department of Transportation to
21 assume all responsibilities of the department relating to the
22 provision of transportation services.

23 SECTION 2.102. (a) Section 1551.159, Insurance Code, as
24 effective June 1, 2003, is amended by amending Subsection (a) and
25 adding Subsection (h) to read as follows:

26 (a) Subject to any applicable limit in the General
27 Appropriations Act, the board of trustees shall use money

1 appropriated for employer contributions to fund 80 percent of the
2 cost of basic coverage for a child who:

3 (1) is a dependent of an employee;

4 (2) would be eligible, if the child were not the
5 dependent of the employee, for benefits under the state child
6 health plan established under Chapter 62, Health and Safety Code
7 ~~[the program established by the state to implement Title XXI,~~
8 ~~Social Security Act (42 U.S.C. Section 1397aa et seq.), as~~
9 ~~amended]; and~~

10 (3) is not eligible for the state Medicaid program.

11 (h) A child enrolled in dependent child coverage under this
12 section is subject to the same requirements and restrictions
13 relating to income eligibility, continuous coverage, and
14 enrollment, including applicable waiting periods, as a child
15 enrolled in the state child health plan under Chapter 62, Health and
16 Safety Code.

17 (b) The change in law made by this section applies only to a
18 child enrolled in dependent child coverage under the state
19 employees group benefits program on and after September 1, 2003.

20 SECTION 2.103. Section 57.046, Utilities Code, is amended
21 by adding Subsection (c) to read as follows:

22 (c) In addition to the purposes for which the qualifying
23 entities account may be used, the board may use money in the account
24 to award grants to the Health and Human Services Commission for
25 technology initiatives of the commission.

26 SECTION 2.104. STUDY. (a) The Medicaid and Public
27 Assistance Fraud Oversight Task Force, with the participation of

1 the Texas Department of Health's bureau of vital statistics and
2 other agencies designated by the comptroller, shall study
3 procedures and documentation requirements used by the state in
4 confirming a person's identity for purposes of establishing
5 entitlement to Medicaid and other benefits provided through health
6 and human services programs.

7 (b) Not later than December 1, 2004, the Medicaid and Public
8 Assistance Fraud Oversight Task Force, with assistance from the
9 agencies participating in the study required by Subsection (a) of
10 this section, shall submit a report to the legislature containing
11 recommendations for improvements in the procedures and
12 documentation requirements described by Subsection (a) of this
13 section that would strengthen the state's ability to prevent fraud
14 and abuse in the Medicaid program and other health and human
15 services programs.

16 SECTION 2.105. TRANSFER OF MEDICAL TRANSPORTATION PROGRAM.

17 (a) On September 1, 2004, or on an earlier date specified by the
18 Health and Human Services Commission:

19 (1) all powers, duties, functions, activities,
20 obligations, rights, contracts, records, property, and
21 appropriations or other money of the Texas Department of Health
22 that are determined by the commissioner of health and human
23 services to be essential to the administration of the medical
24 transportation program are transferred to the Health and Human
25 Services Commission;

26 (2) a rule or form adopted by the Texas Department of
27 Health that relates to the medical transportation program is a rule

1 or form of the Health and Human Services Commission and remains in
2 effect until altered by the commission;

3 (3) a reference in law or an administrative rule to the
4 Texas Department of Health that relates to the medical
5 transportation program means the Health and Human Services
6 Commission;

7 (4) a license, permit, or certification in effect that
8 was issued by the Texas Department of Health and that relates to the
9 medical transportation program is continued in effect as a license,
10 permit, or certification of the Health and Human Services
11 Commission; and

12 (5) a complaint, investigation, or other proceeding
13 pending before the Texas Department of Health that relates to the
14 medical transportation program is transferred without change in
15 status to the Health and Human Services Commission.

16 (b) The Health and Human Services Commission shall take all
17 action necessary to provide for the transfer of the medical
18 transportation program to the commission as soon as possible after
19 the effective date of this section but not later than September 1,
20 2004.

21 SECTION 2.106. CONSOLIDATION OF CERTAIN DIVISIONS AND
22 ACTIVITIES. (a) Not later than March 1, 2004, the Health and Human
23 Services Commission shall consolidate the Medicaid post-payment
24 third-party recovery divisions or activities of the Texas
25 Department of Human Services, the Medicaid vendor drug program, and
26 the state's Medicaid claims administrator with the Medicaid
27 post-payment third-party recovery function.

1 (b) The Health and Human Services Commission shall use the
2 commission's Medicaid post-payment third-party recovery contractor
3 for the consolidated division.

4 (c) The Health and Human Services Commission shall update
5 its computer system to facilitate the consolidation.

6 SECTION 2.107. ABOLITION OF ADVISORY COMMITTEES. (a)
7 Notwithstanding any other provision of state law, each advisory
8 committee, as that term is defined by Section 2110.001, Government
9 Code, created before the effective date of this section that
10 advises a health and human services agency is abolished on the
11 effective date of this section unless the committee:

12 (1) is required by federal law; or

13 (2) advises an agency with respect to certification or
14 licensing programs, the regulation of entities providing health and
15 human services, or the implementation of a duty prescribed under
16 this article, as determined by the commissioner of health and human
17 services.

18 (b) The commissioner of health and human services shall
19 certify which advisory committees are exempt from abolition under
20 Subsection (a) of this section and shall publish that certification
21 in the Texas Register.

22 SECTION 2.108. CHILD HEALTH PLAN PROGRAM WAIVER. Not later
23 than October 1, 2003, the Health and Human Services Commission
24 shall request and actively pursue any necessary waivers from a
25 federal agency or any other appropriate entity to allow families
26 enrolled in the state Medicaid program to opt into the child health
27 plan program under Chapter 62, Health and Safety Code, while

1 retaining the appropriate federal match rate.

2 SECTION 2.109. STATE CHILD HEALTH PLAN AMENDMENT. (a) In
3 this section, "group plan" means the group health benefit plan
4 under the health insurance premium payment reimbursement program
5 established under Section 62.059, Health and Safety Code.

6 (b) As soon as possible after the effective date of this
7 section, the Health and Human Services Commission shall submit for
8 approval a plan amendment relating to the state child health plan
9 under 42 U.S.C. Section 1397ff, as amended, as necessary to include
10 the employers' share of required premiums for coverage of
11 individuals enrolled in the group plan as expenditures for the
12 purpose of determining the state children's health insurance
13 expenditures, as that term is defined by 42 U.S.C. Section
14 1397ee(d)(2)(B), as amended, for federal match funding for the
15 child health plan program provided under Chapter 62, Health and
16 Safety Code.

17 SECTION 2.110. STATE MEDICAID PLAN AMENDMENT. (a) In this
18 section, "group plan" means the group health benefit plan under the
19 health insurance premium payment reimbursement program for
20 Medicaid recipients established under Section 32.0422, Human
21 Resources Code.

22 (b) As soon as possible after the effective date of this
23 section, the Health and Human Services Commission shall submit an
24 amendment to the state Medicaid plan as necessary to allow this
25 state to include the employers' share of required premiums for
26 coverage of individuals enrolled in the group plan as expenditures
27 for the purpose of determining this state's Medicaid program

1 expenditures for federal match funding for the state Medicaid
2 program.

3 SECTION 2.111. REPEAL. (a) The following are repealed:

4 (1) Sections 62.055(b) and (c), 62.056, 62.057,
5 252.206(d), and 252.207(b), Health and Safety Code; and

6 (2) Section 32.0315, Human Resources Code.

7 (b) An advisory committee established under Section 62.057,
8 Health and Safety Code, is abolished on the effective date of this
9 section.

10 SECTION 2.112. In the event of a conflict between a
11 provision of this Act and another Act passed by the 78th
12 Legislature, Regular Session, 2003, that becomes law, this Act
13 prevails and controls regardless of the relative dates of
14 enactment.

15 SECTION 2.113. FEDERAL AUTHORIZATION OR WAIVER. If before
16 implementing any provision of this Act a state agency determines
17 that a waiver or authorization from a federal agency is necessary
18 for implementation of that provision, the agency affected by the
19 provision shall request the waiver or authorization and may delay
20 implementing that provision until the waiver or authorization is
21 granted.

22 SECTION 2.114. EFFECTIVE DATE. Except as otherwise
23 provided by this article, this article takes effect September 1,
24 2003.